

MONEY LAUNDERING INVESTIGATIONS

Asset Forfeiture and Money
Laundering Unit
FBI Headquarters

TOPICS

1. Elements of federal money laundering.
2. Recent money laundering legal issues.
3. The latest money laundering threats.
4. Money laundering investigative techniques.
5. International money laundering.

ELEMENTS OF FEDERAL MONEY LAUNDERING

MONEY LAUNDERING VIOLATIONS

Q. What exactly is money laundering?

A. Taking dirty money and doing something prohibited with it.

For more details, see 18 U.S.C. 1956,
1957.

MONEY LAUNDERING VIOLATIONS

- The dirty money has to be from a specified unlawful activity (“SUA”) and has to be moved in a way that is considered money laundering:
 - 1. used to promote the SUA (1956)
 - 2. concealed, disguised (1956)
 - 3. over \$10,000 and deposited into a financial institution (1957)

1956 vs. 1957

- 1956= money laundering
- 1957= money spending

1956 vs. 1957

- 1956= using the dirty money to promote the offense or concealing the dirty money
- 1957= putting the dirty money, over \$10,000, in a bank or other financial institution

1956 vs. 1957

Q. Is either charge a lesser included offense of the other?

A. No, they are separate offenses and so they should be charged in separate counts.

U.S. v. Caruso, 948 F. Supp. 382. 390-91 (D.N.J. 1996); U.S. v. Huber, 2002 WL 257851 (D.N.D. 2002).

1956 vs. 1957

- Courts have held that spending SUA proceeds openly, without the intent to conceal or promote, does not violate 1956.

U.S. v. Majors, 196 F.3d 1206 (11th Cir. 1999); U.S. v. Sanders, 929 F.2d 25 (10th Cir. 1991).

But such conduct does violate 1957.

ELEMENTS OF MONEY LAUNDERING

Wise
Guy

“I’d hate to see anything bad
happen to your nice restaurant.”

Restaurant
owner



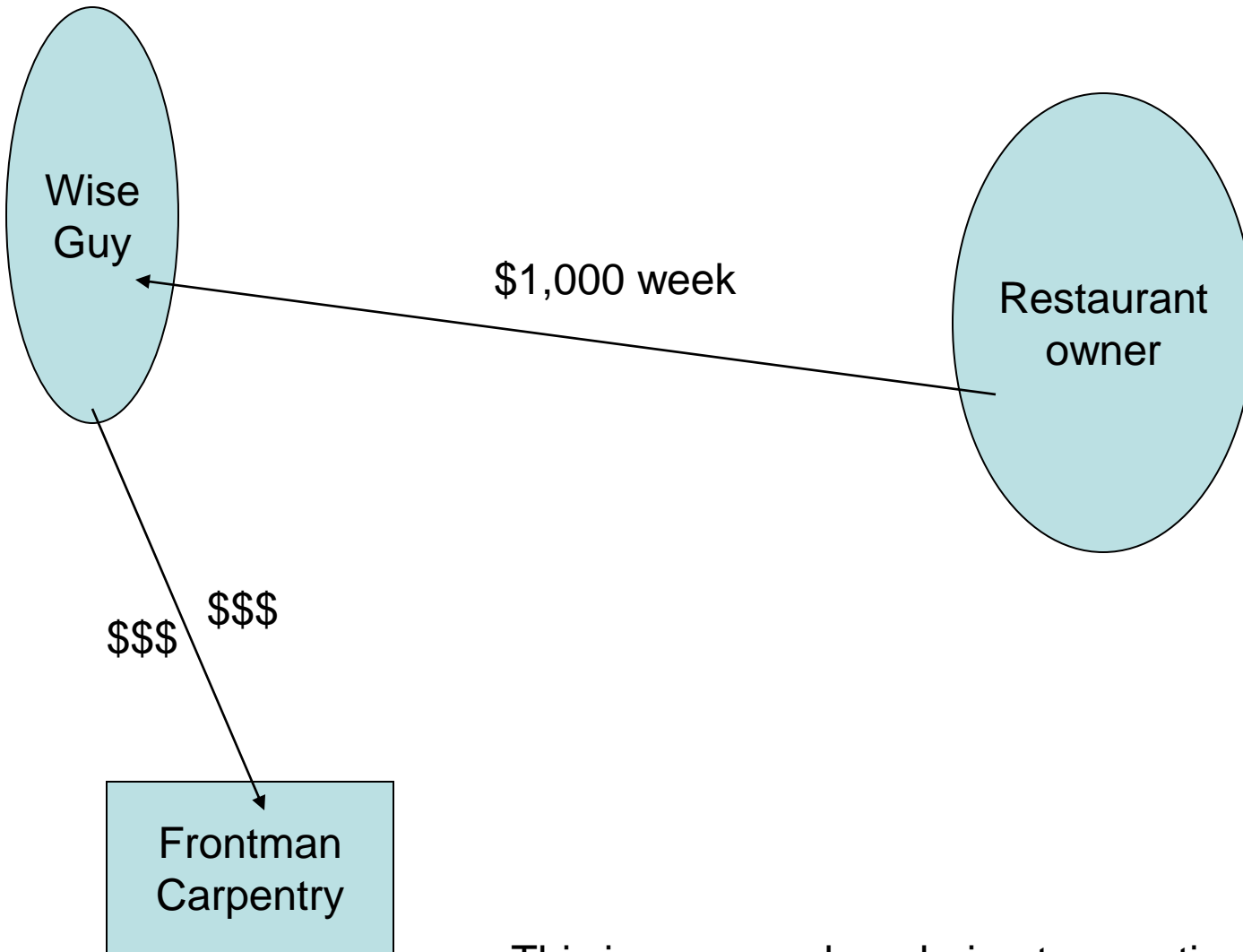




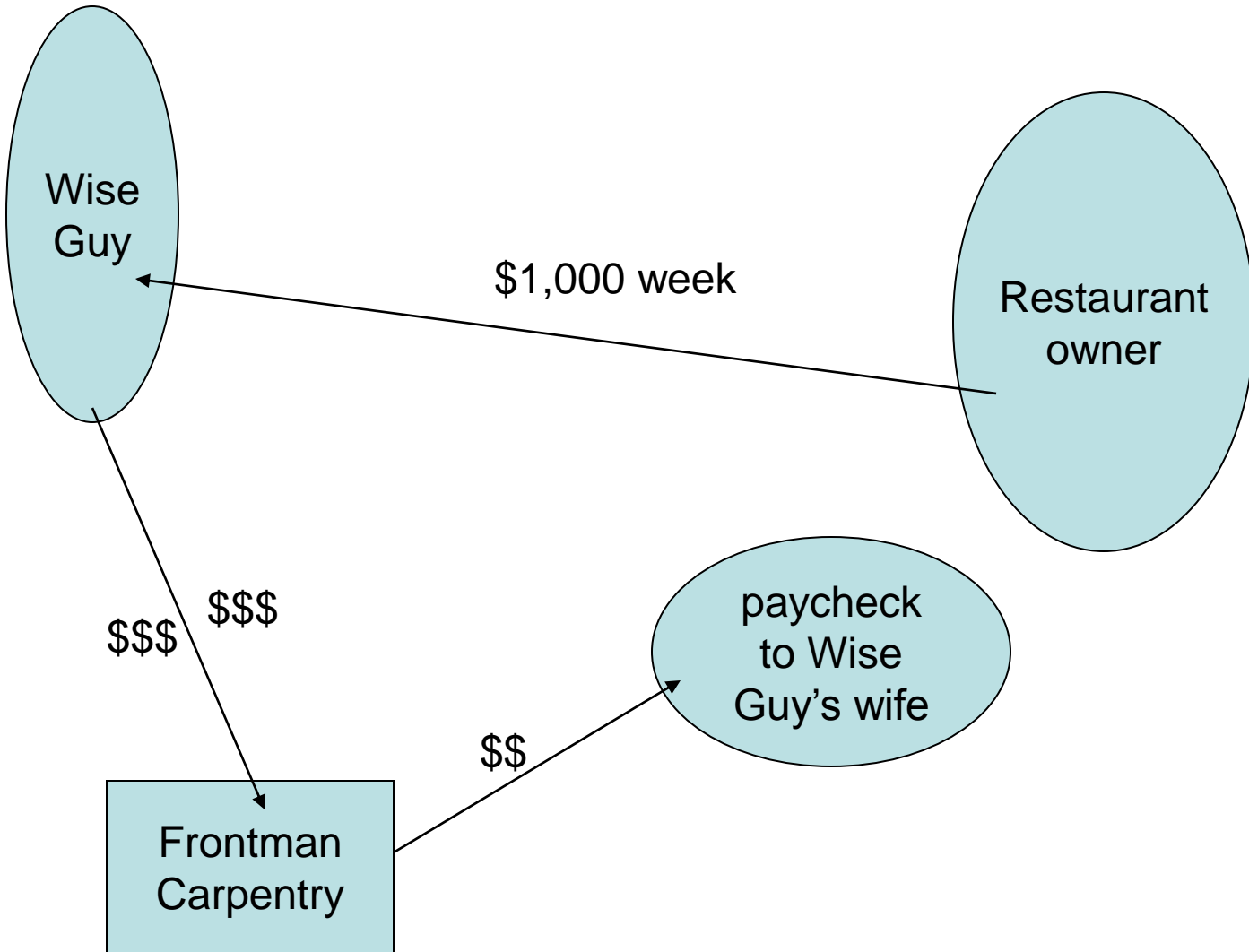
Is this a money laundering transaction?

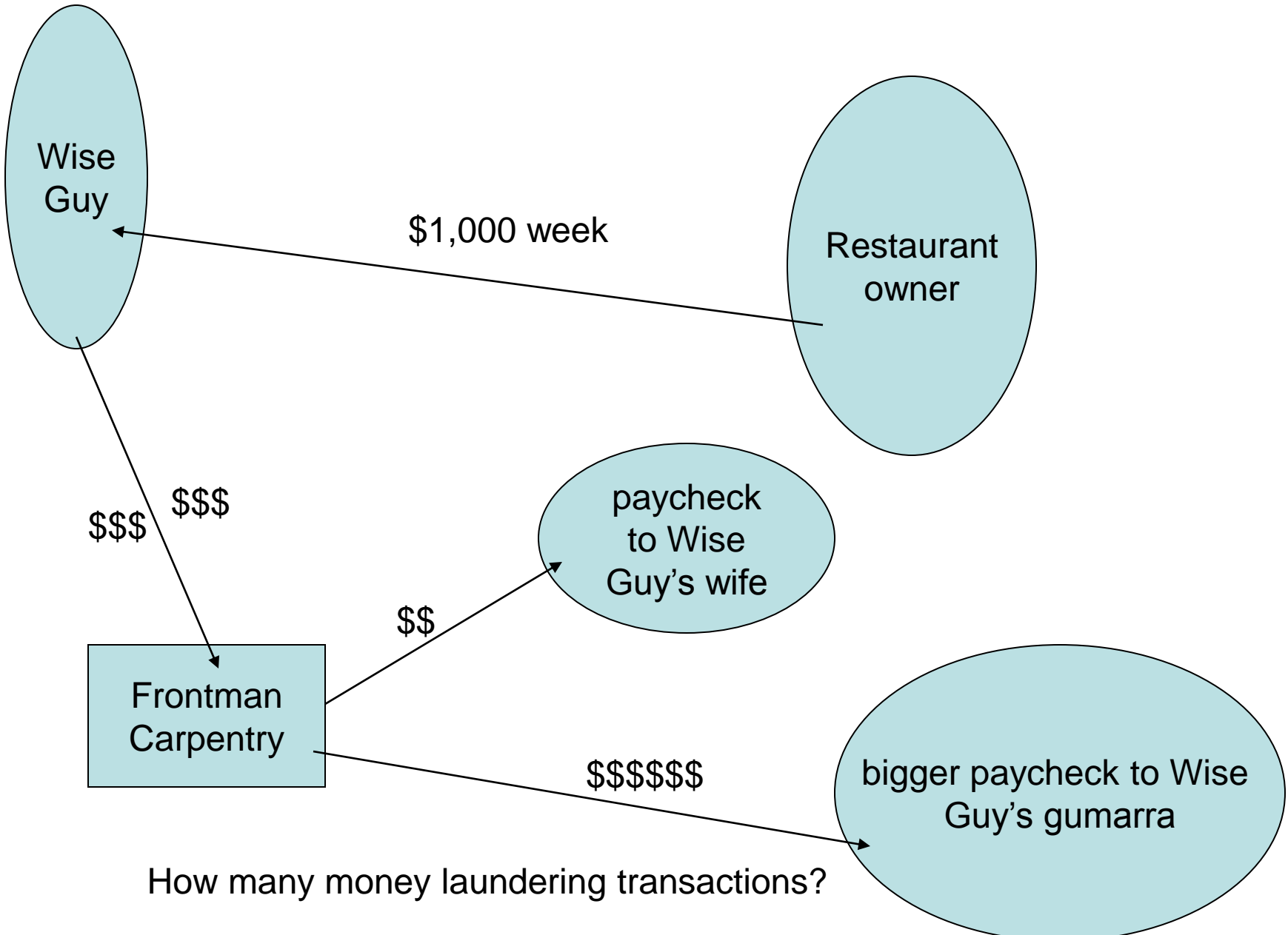


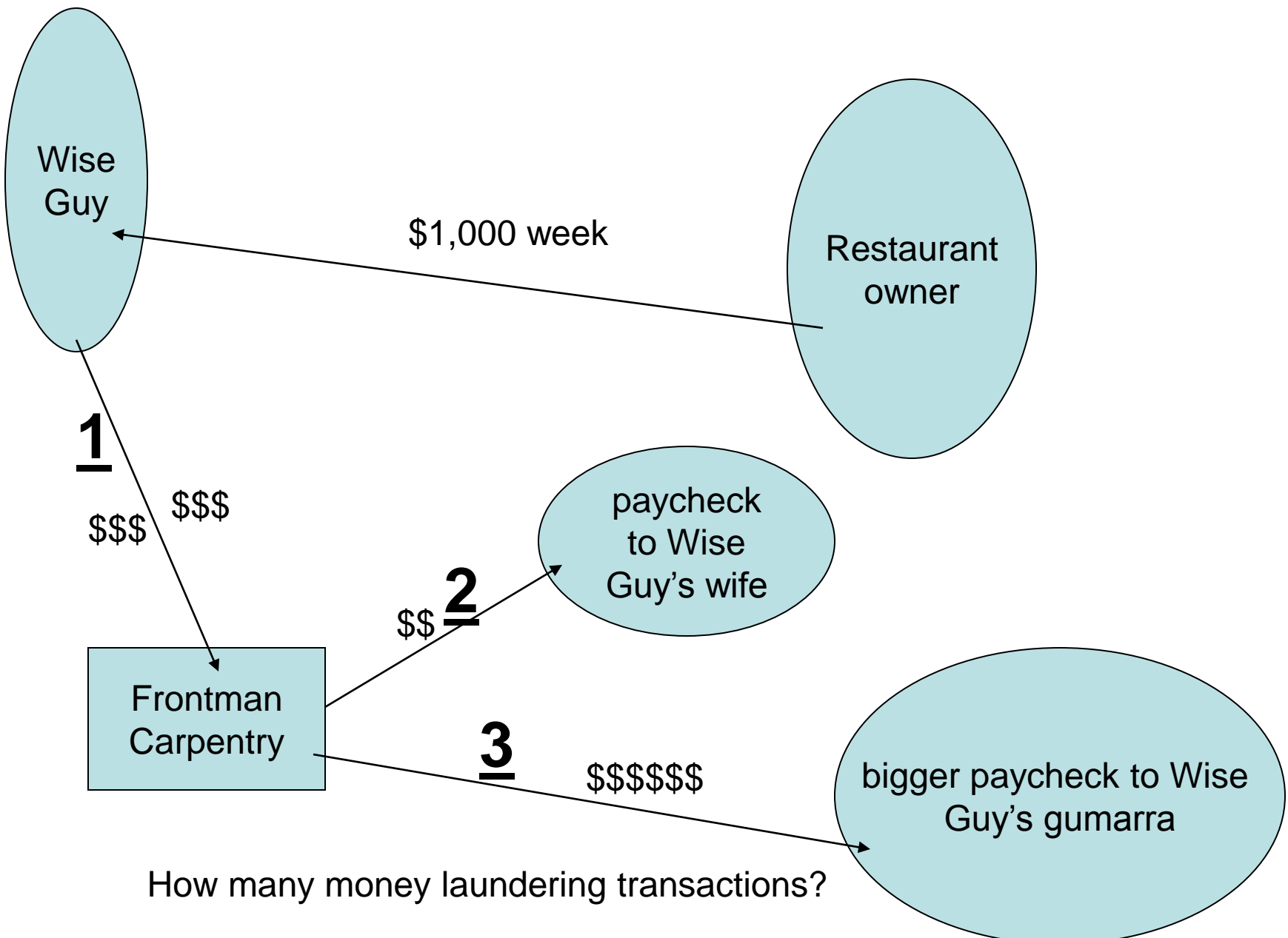
No. The money becomes dirty once it is paid to the bad guy. Specifically, it is extortion proceeds in violation of 18 U.S.C. 1951, which is a specified unlawful activity. 18 U.S.C. 1956 (c)(7).



This is a money laundering transaction done to conceal the criminal proceeds. 18 U.S.C. 1956 (a)(1)(B)(i).

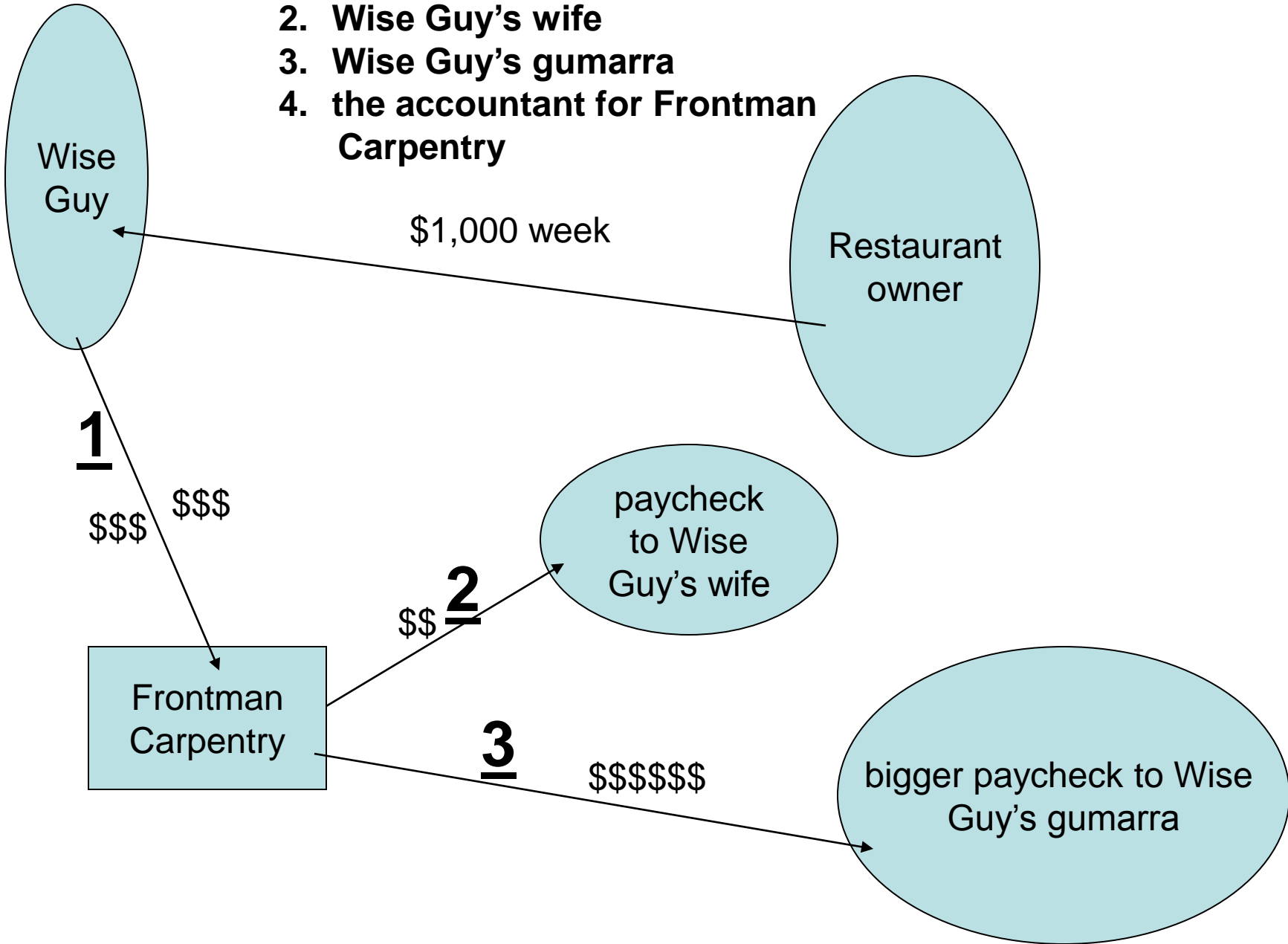






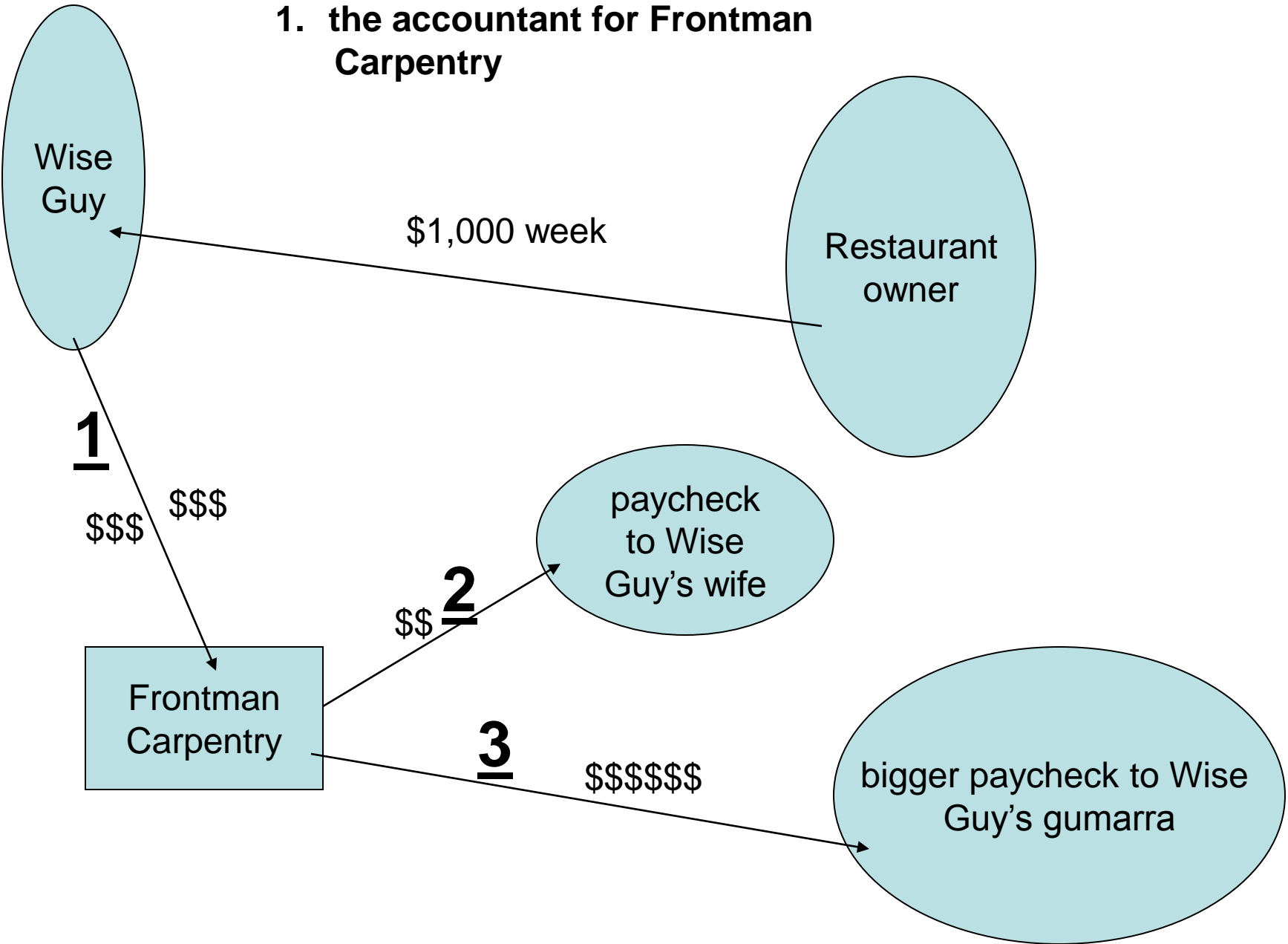
Who's getting arrested?

1. **Wise Guy**
2. **Wise Guy's wife**
3. **Wise Guy's gumarra**
4. **the accountant for Frontman Carpentry**



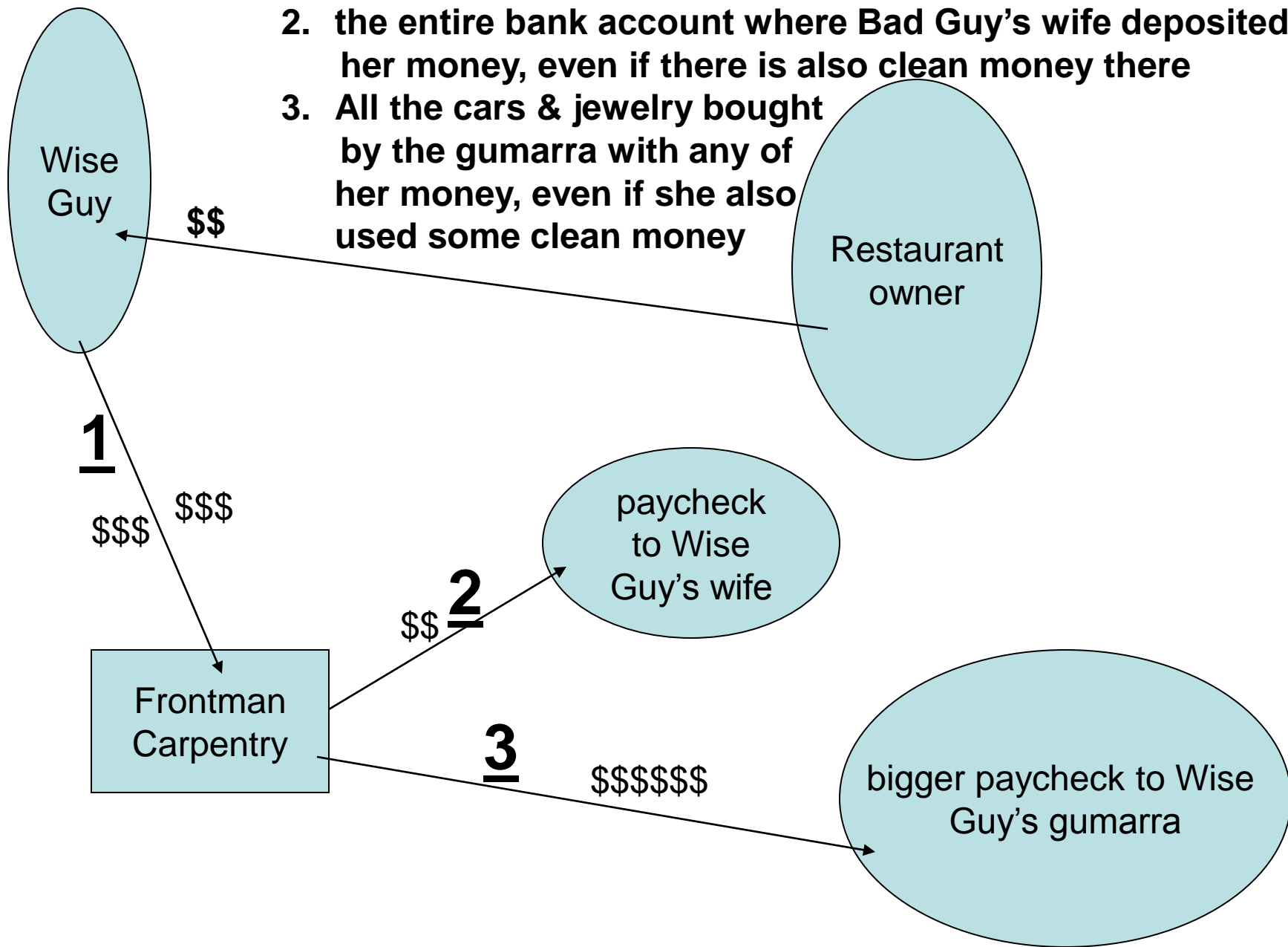
Who's getting arrested first?

1. the accountant for Frontman Carpentry

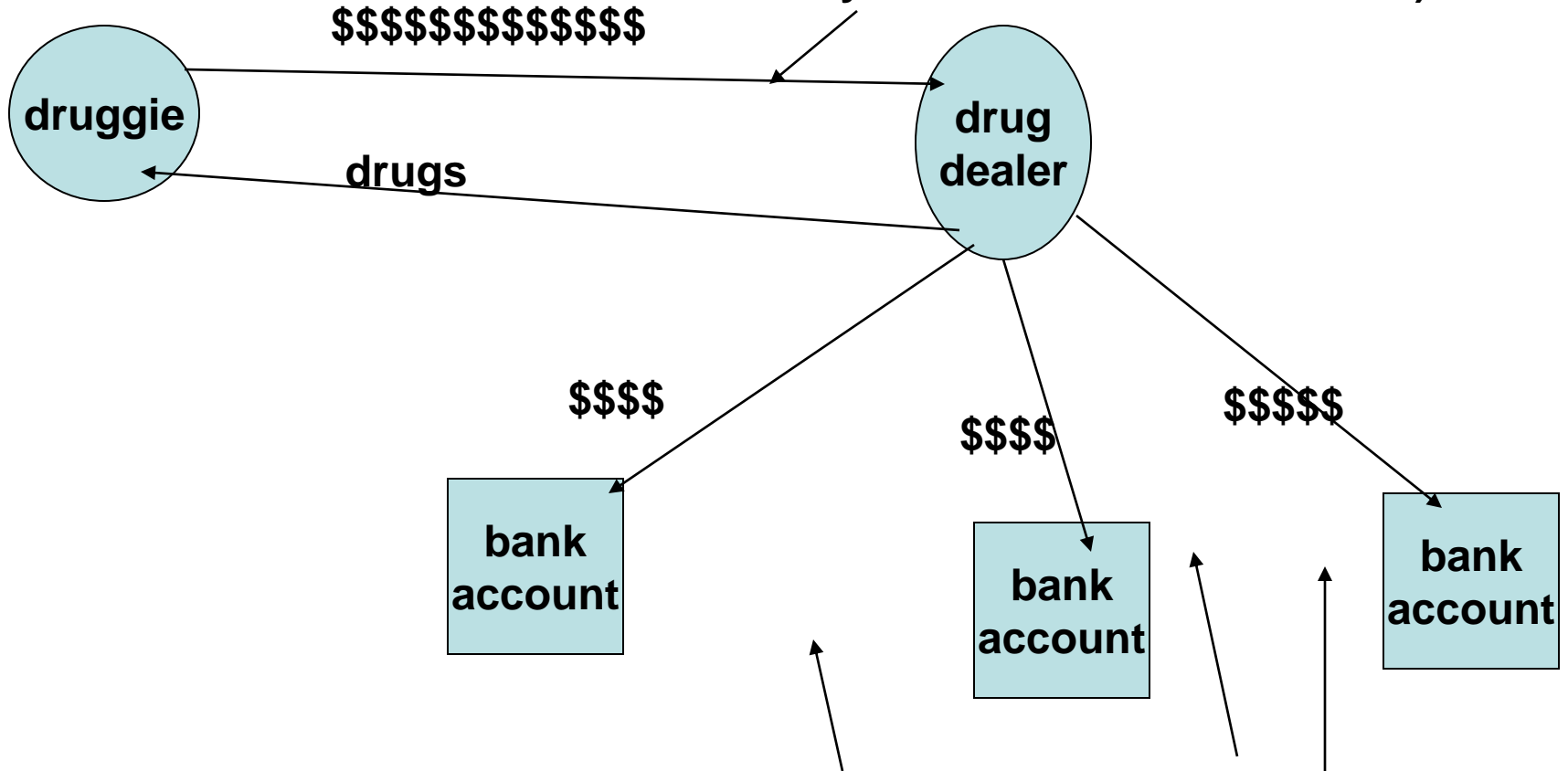


What's getting forfeited?

1. All assets of Frontman
2. the entire bank account where Bad Guy's wife deposited her money, even if there is also clean money there
3. All the cars & jewelry bought by the gumarra with any of her money, even if she also used some clean money



not a money
laundering
transaction (because the money is not
dirty until the dealer receives it)



all money laundering transactions, can
be charged under 18 U.S.C. 1957

MONEY LAUNDERING ELEMENTS

- Money laundering elements:
 1. transaction
 2. proceeds
 3. knowledge
 4. purpose

MONEY LAUNDERING ELEMENTS

- There are four questions that we have to answer to be sure that we have all of the elements of a money laundering transaction.

MONEY LAUNDERING ELEMENTS

- 1. What is the transaction?
- We must have money going between people, bank accounts, etc.

MONEY LAUNDERING ELEMENTS

- 2. Where does the money come from?
- We must have proof that the money comes from some specified unlawful activity.

MONEY LAUNDERING ELEMENTS

- 3. How do we prove that our subject knew that the money was dirty?
- This can be proven by the subject's suspicious conduct, such as opening bank accounts in the names of shell companies, structuring deposits/withdrawals, etc.

MONEY LAUNDERING ELEMENTS

- 4. What was the subject trying to do with the money?
- Our theory will be that the money was being used to either: (a) conceal the dirty money; or (b) promote the specified unlawful activity. Again, this can be proven through circumstantial evidence by the suspicious conduct of the subject, which will demonstrate his/her guilty state of mind.

**RECENT MONEY
LAUNDERING LEGAL ISSUES**

NEW MONEY LAUNDERING ISSUES

- The Supreme Court just addressed issues on the “concealment” element of money laundering, as well as the definition of “proceeds.”

CONCEALMENT

- United States v. Cuellar, 128 S.Ct. 436 (2008)—Bad news: where our subject is transporting money, in other words, is a courier, the fact that the subject hides the money while he's transporting it isn't enough for "concealment." We have to prove that the purpose of transporting it was to conceal it.

CONCEALMENT

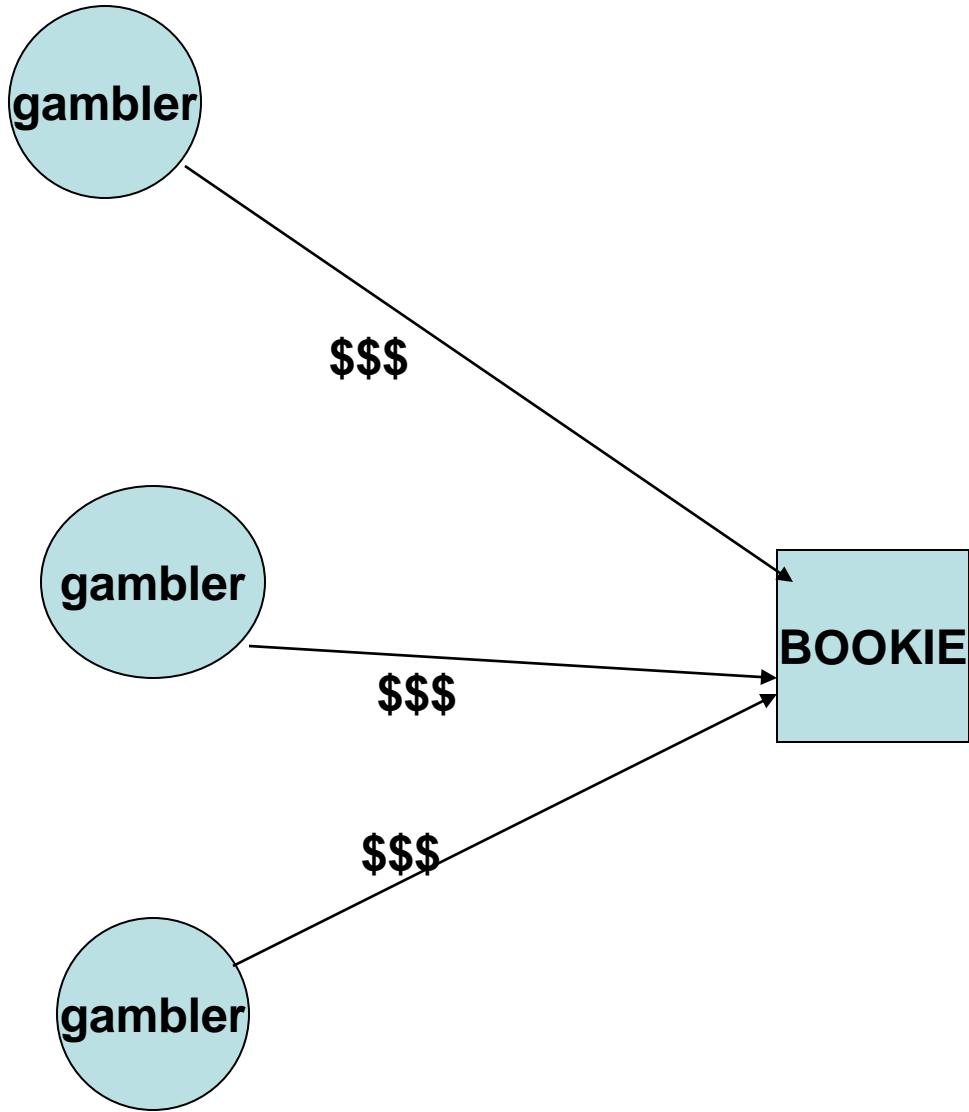
- Therefore, if our subject was hiding cash under the floorboard of the car, we will need to know where he was bringing the money and if the trip was to a place where criminals often hide their money, then that might be enough. If not, we will need some other proof that the ultimate purpose was to conceal the money. The fact that it was physically concealed at the time we seized it will not be enough.

CONCEALMENT

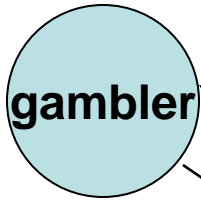
- United States v. Cuellar, 128 S.Ct. 436 (2008)—Good news: Supreme Court also held that we don't have to prove that our subject actually tried to “clean” the money, by making it look legit. While “cleaning” money is one way to conceal it, we can also charge money laundering where our subjects transfer money just for the purpose of hiding it, which is much easier to prove.

PROCEEDS

- United States v. Santos, 128 S.Ct. 2020 (2008)—bad news: Supreme Court held that, at least in gambling cases, “proceeds” means “profit,” not “gross receipts.”



WINNER



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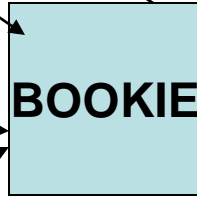
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**Not money laundering
because this money is
not profit**

LOSER

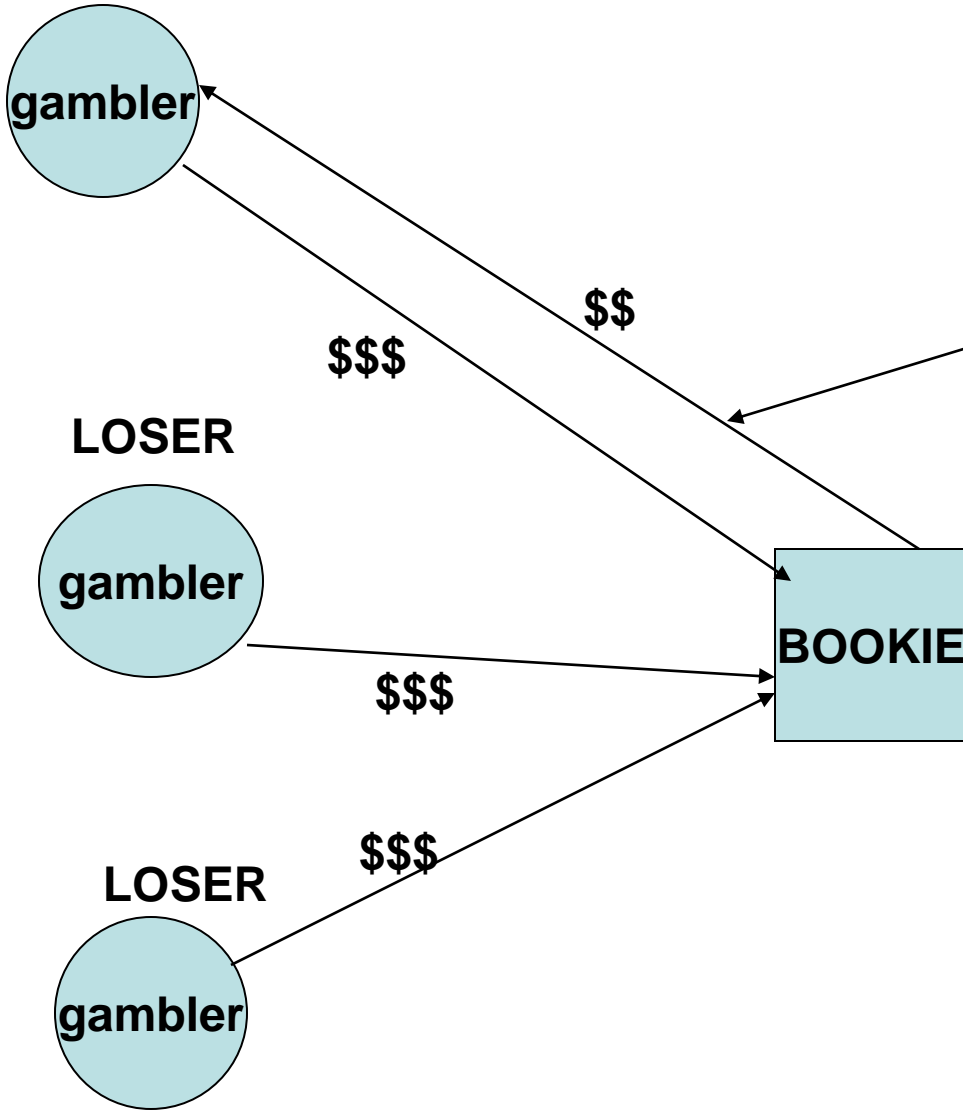
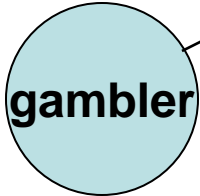


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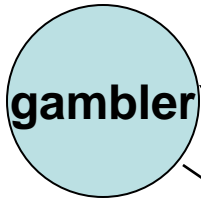


LOSER

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WINNER



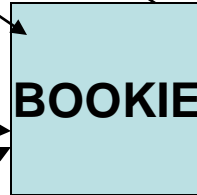
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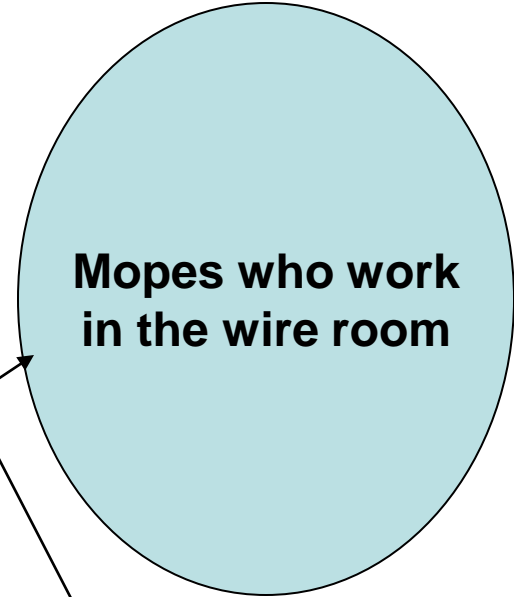
LOSER



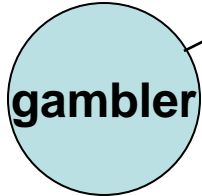
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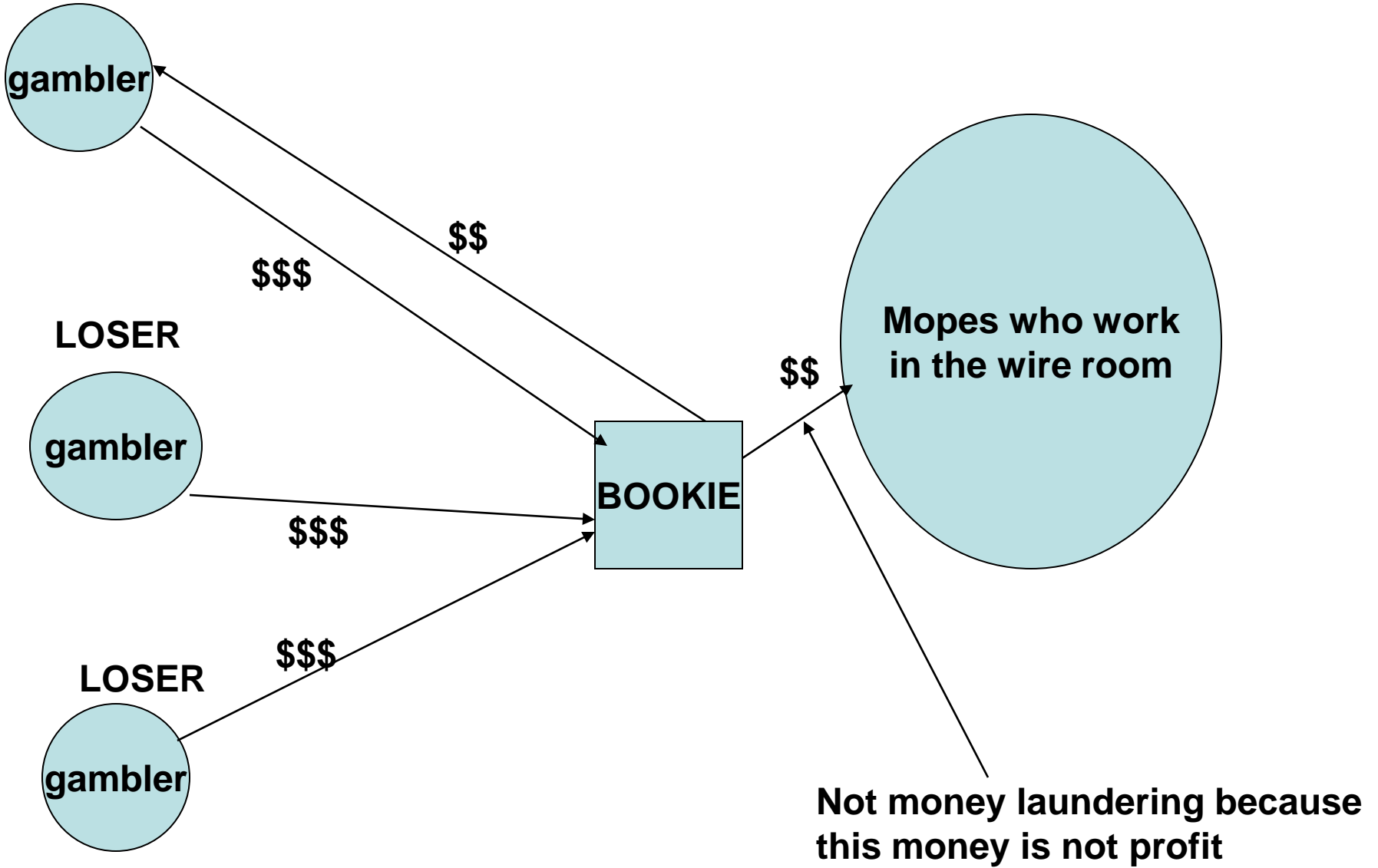


LOSER



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**Not money laundering because
this money is not profit**



SANTOS UPDATE

- Congress just changed the law to define “proceeds” as any property derived from unlawful activity, including gross receipts.
- Effective May 20, 2009 so any crimes committed before that time are subject to the Supreme Court’s holding in Santos.

EMERGING MONEY LAUNDERING THREATS

LATEST THREATS

- Stored value devices
- Shell corporations
- Electronic & virtual currency
- Unlicensed money remitting

STORED VALUE DEVICES

- Most common in the U.S. at this time are pre-paid cards and debit cards.
- Two types of stored value cards: closed system and open system.

CLOSED SYSTEM CARDS

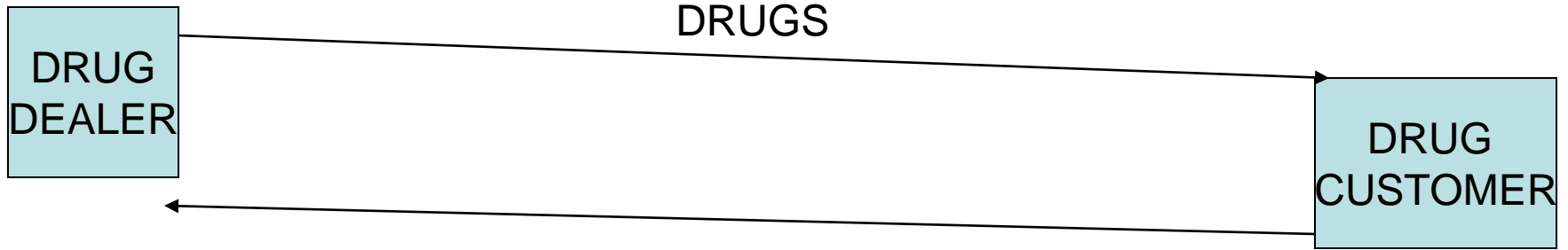
- These are cards where the amount of money on them is pre-loaded and cannot be refilled.
- Typical examples: gift cards, such as Starbucks & Home Depot.
- Money launderers, particularly drug dealers, have managed to use these cards to launder criminal proceeds.

DRUG
DEALER

DRUGS

DRUG
CUSTOMER

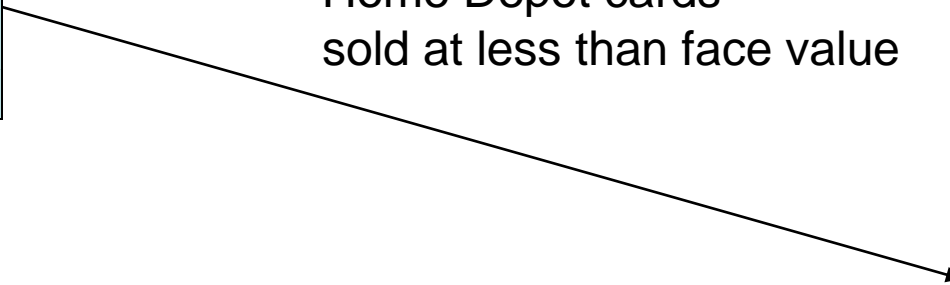
HOME DEPOT GIFT CARDS



DRUG
DEALER

Home Depot cards
sold at less than face value

E-BAY,
CRAIGS LIST,
ETC.



RECENT INTELL ON PRE-PAID CARDS

- There have been several reports of traffic stops and border searches which yielded large amounts of gift cards being carried by individuals headed to Mexico.
- It is believed that these cards are being used as payments for narcotics.

OPEN SYSTEM CARDS

- Present the most significant money laundering threat.
- Common examples: reloadable Visa and Mastercard debit cards.
- Cards can be reloaded over the internet.
- Presently there is no requirement to declare these cards at the border, regardless of how many the traveler has or how much money is on them.

OPEN SYSTEM CARDS

- When seized, we must determine the provider and program manager and serve a seizure warrant on them ASAP to keep our subject from recovering the value.
- Most common program manager is Green Dot. They are very cooperative with law enforcement.

EMERGING TECHNOLOGIES

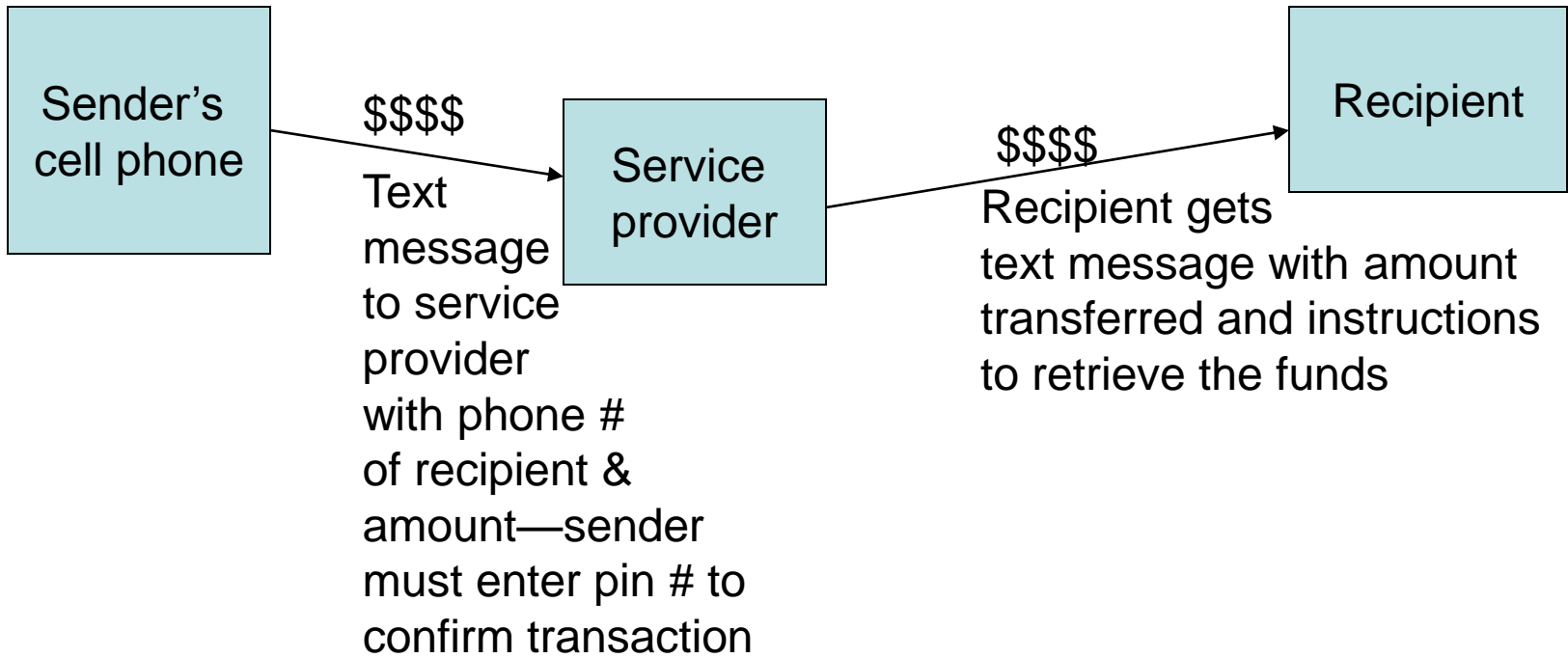
- Coming soon: M-Payments.
- Already common in Eastern Europe, cell phones can be used to store and transfer value.
- A total of 3 billion people in the world have cell phones. Only 1 billion have bank accounts.

MOBILE PAYMENTS

- After registering a cell phone and installing the necessary SIM card, an account can be created and funded.
- Accounts can be funded through cash or through pre-paid cards.
- The funded account can then be used to transfer funds or to pay for goods or services.

MOBILE PAYMENTS

- Payments can be withdrawn at an ATM.
- Wire transfers can be sent directly from the mobile phone.
- This technology has not yet hit the U.S. When it does, it is predicted that mobile phones will be able to hold up to \$10,000.



ELECTRONIC CURRENCY

- Services such as E-Gold permit their account holders to buy, store and transfer electronic currency, which can then be withdrawn from an ATM machine in the currency of the country where the ATM is located.
- These services claim that their currency is backed up by actual gold bullion, which in some cases is accurate.

VIRTUAL CURRENCY

- Certain websites, such as Second Life, utilize virtual currency, which can be exchanged with other patrons of the website and withdrawn from ATM machines, thereby converting the virtual currency to that of any country desired.

USE OF SHELL COMPANIES

REVERSE MORTGAGE FRAUD

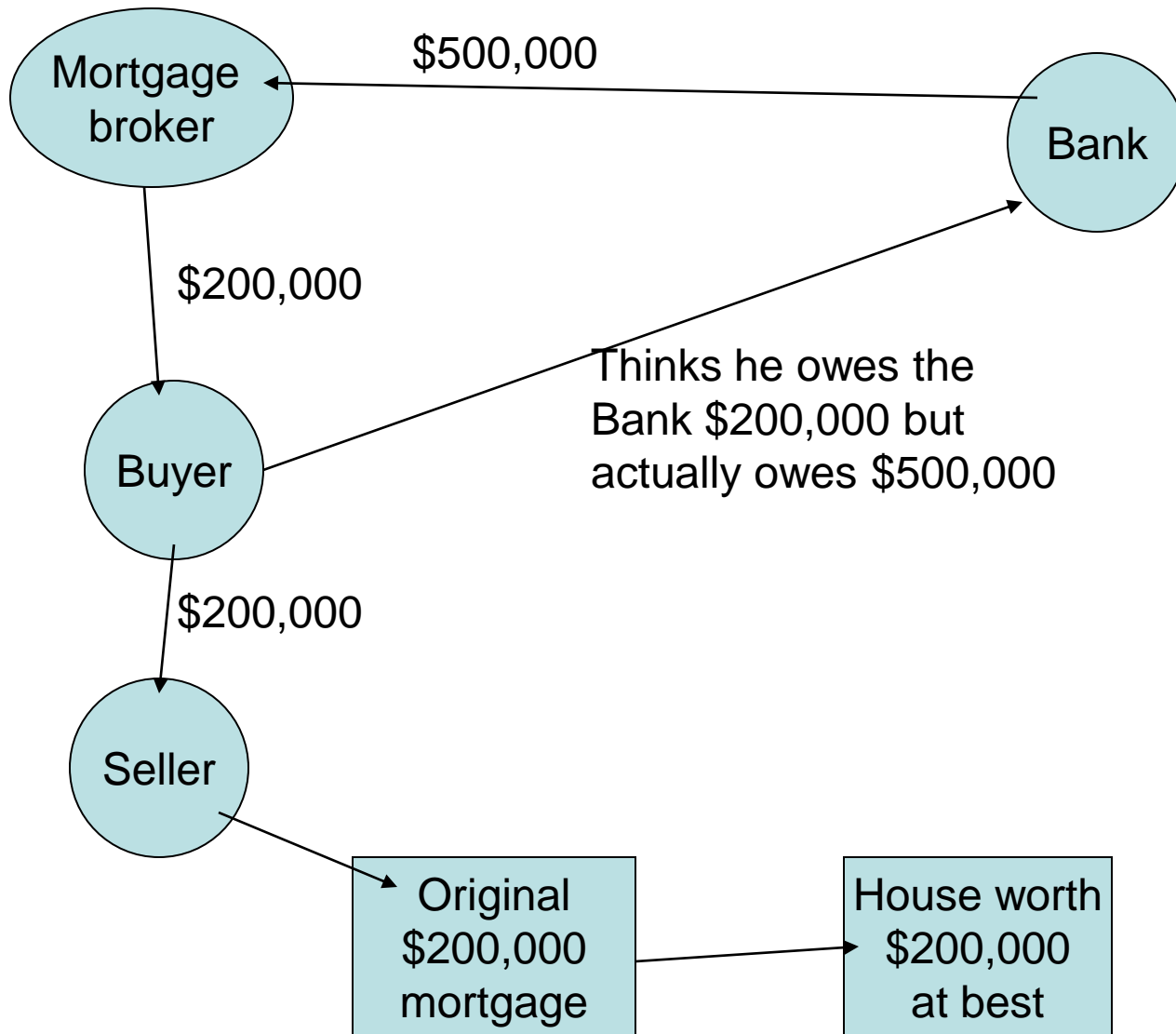
- Corrupt mortgage broker contacts homeowner who is facing foreclosure.
- Offers to save their property from foreclosure.
- Tells homeowner that if they execute a contract of sale transferring the property, they will be able to get it back after the mortgage is caught up.
- The broker then gets a buyer who is not told anything about a temporary transfer and believes they are buying the property for good.

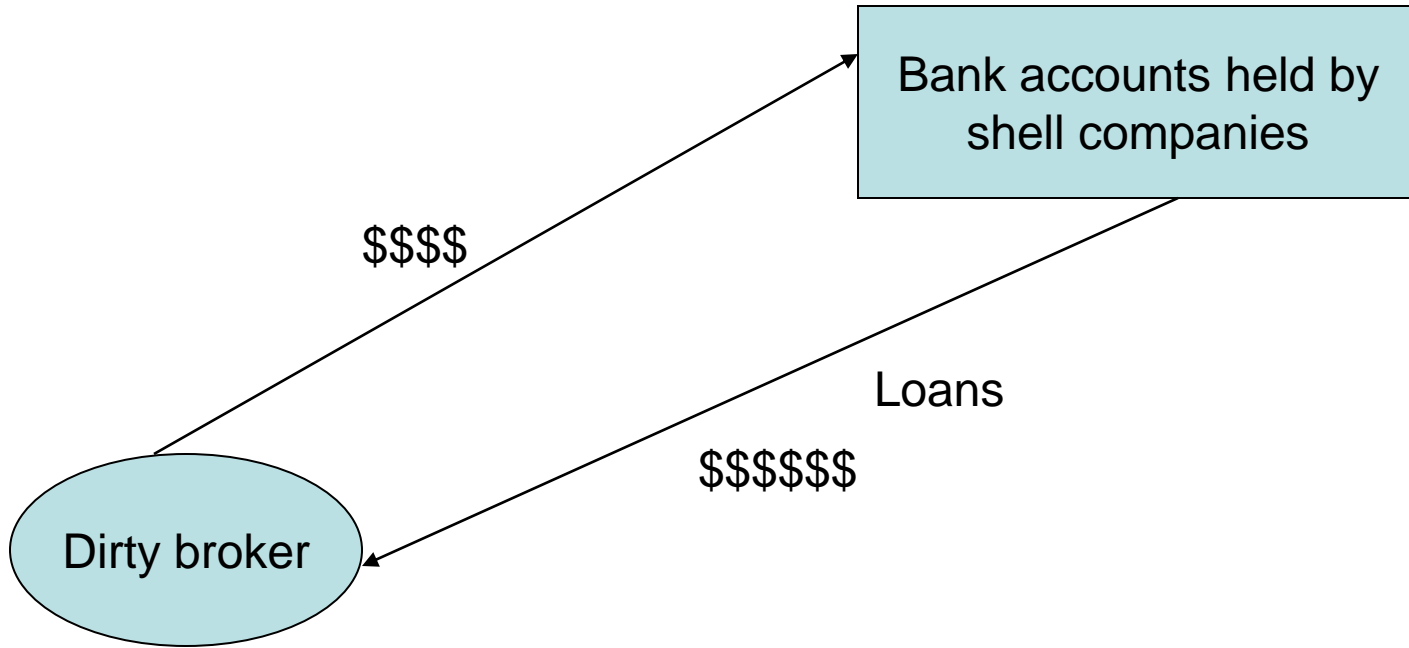
REVERSE MORTGAGE FRAUD

- Broker gets inflated appraisal for the property and gets a bank to finance the purchase at a higher price than what the buyer is paying.
- Broker uses two sets of contracts, one at the lower price, which he gives to the seller and buyer, and another at the higher price, which he gives to the bank.

REVERSE MORTGAGE FRAUD

- Broker then transfers the additional loan proceeds to bank accounts held in the names of a shell companies.
- The shell companies then make the broker a series of loans of the money held in shell companies' bank accounts.
- When the buyer cannot make the mortgage payments, the bank forecloses. It loses money because the home is not worth what the broker represented it to be.





Files no taxes on the loans although he never repays them

ROLE OF ACCOUNTANTS

- Accountants are frequently used by fraudsters to:
 - 1. Open shell companies
 - 2. File tax returns on behalf of shell companies
- Regardless of the type of fraud being committed, the shell companies are used to facilitate the money laundering.

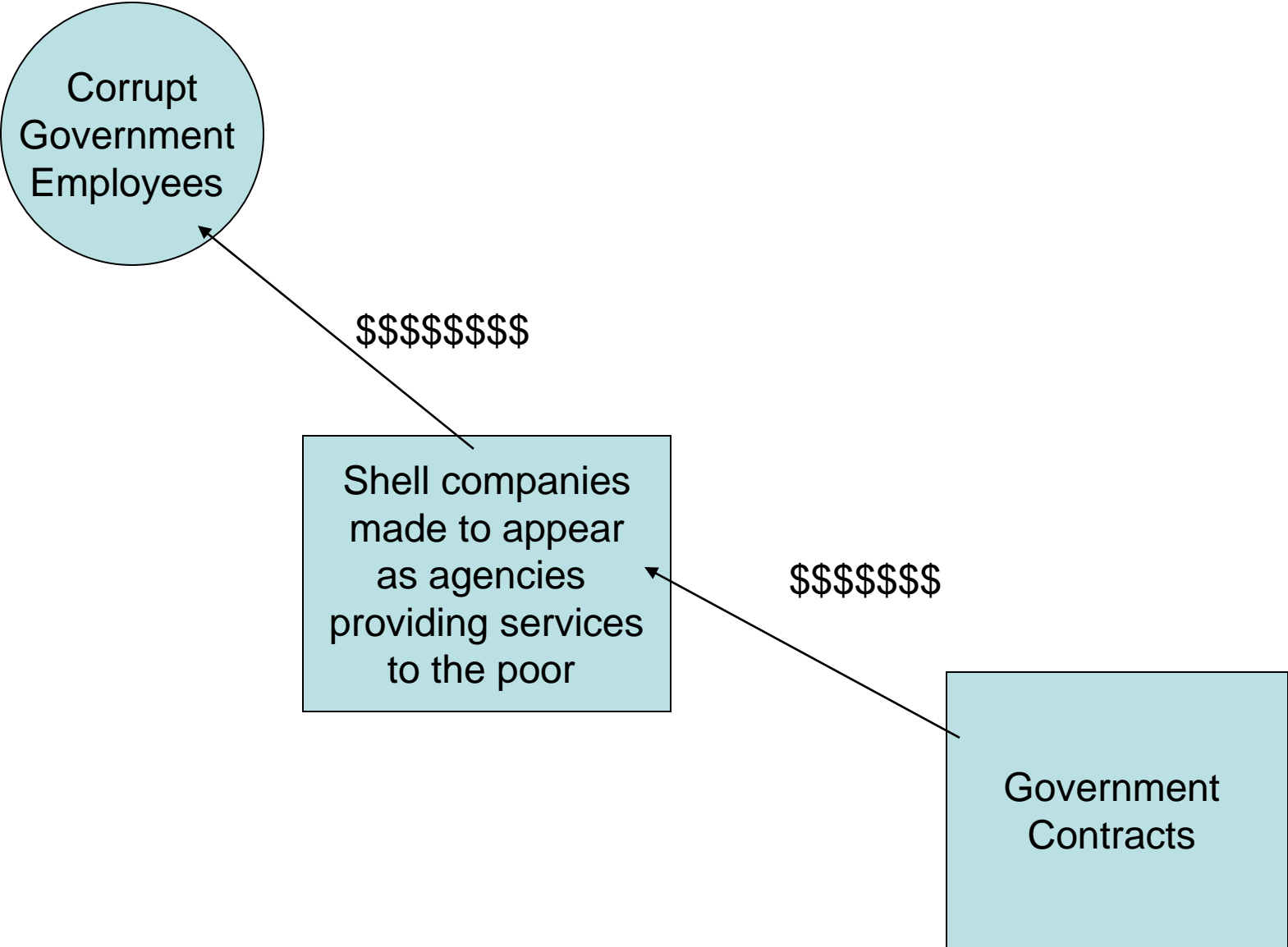
Corrupt
Government
Employees

\$\$\$\$\$\$\$\$

Shell companies
made to appear
as agencies
providing services
to the poor

\$\$\$\$\$\$\$\$

Government
Contracts



SIGNS THAT SHELL COMPANIES ARE BEING USED FOR MONEY LAUNDERING

1. The suspect is not a shareholder and receives loans with no terms and pays no interest. (IRS uses “all events test” to determine if this is tax evasion).
2. The suspect receives dividends or paychecks from shell companies whose bank accounts are located in off-shore countries.

SIGNS THAT SHELL COMPANIES ARE BEING USED FOR MONEY LAUNDERING

3. The suspect receives significant paychecks from a private company in addition to getting a W-2 from a government job.

**EXISTING BUSINESSES THAT
ARE UNIQUELY SITUATED TO
FACILITATE MONEY
LAUNDERING**

MONEY REMITTING BUSINESSES

- Have been used by criminals and terrorists alike to conceal and move money.
- Informal banking systems, such as hawalas and humdies, have existed for hundreds of years.
- They are required to register with the Treasury Department and in most states, they must also get a license from the state.

MONEY REMITTING BUSINESSES

- Unlicensed money remitters create a tremendous vulnerability for law enforcement because they allow criminals and terrorist financiers to fly completely under the radar.
- It is a felony for a money remitter to fail to register or to get the required license.

MONEY REMITTERS

- Can be charged under federal law if they are operating either:
 - (A) Without State license
 - (B) Without complying with Treasury Dept. regs
 - (C) With funds known to be bad (derived from a criminal offense)

18 U.S.C. 1960

SIGNS THAT SOMEONE IS OPERATING AS AN UNLICENSED MONEY REMITTER

- The client has a cash business but receives large numbers of personal checks.
- The client has a business that is local in nature but regularly sends or receives international wire transfers through their business accounts.
- The client structures their deposits or withdrawals to avoid CTR filings.

**MONEY LAUNDERING
INVESTIGATIVE
TECHNIQUES**

MONEY LAUNDERING INVESTIGATIONS

- Q. What is the best way to find bank accounts of our subjects?
- A. Recent mortgages, SARs, CTRs, subpoenas to FEDWIRE, CHIPS; followed by Patriot Act 314(a) request.

RECENT MORTGAGES

- Will often have lists of all of our subject's assets including bank accounts, cars, no show jobs and other real properties.
- Often we'll get copies of tax returns as well.

SARs, CTRs

- Suspicious Activity Reports
- Currency Transaction reports

SARS

- Available through GATEWAY-CBRS (currency banking retrieval system). If your agency doesn't have access, we can help you get it.

SARS

- All financial institutions are required to file Suspicious Activity Reports on their customers. 31 C.F.R. 103.18, 103.20.
- Includes banks, casinos, check cashers, etc.

SARS

- Is there a minimum dollar amount for a bank to file a SAR?
- No. Although they have to focus on activity \$5,000 or greater, they often file on any transaction that looks suspicious, including attempts to open new accounts.

SARS

- SARs are now supposed to include the specific violation suspected by the financial institution, e.g. structuring, unlicensed money transmitter.
- IRS usually handles structuring offenses but it is often a sign of money laundering.

SARS

- Cannot be disclosed or used in any court papers, so they cannot be referred to in affidavits for arrest or search warrants.
- But the underlying facts can be used. 302 can be done with the bank officer and/or the bank records can be subpoenaed.
- In any event, the SAR identifies accounts for us to check out.

CTRS

- Financial institutions must file on all transactions greater than \$10,000. 31 C.F.R. 103.22.

IDW

IDW can be used to simultaneously search over 40 databases, including:

TFOS Financial Reports

CIA Intelligence Information Reports

Currency and Monetary Information Reports

Currency Transaction Reports

IRS Form 8300 filings

Money Service Business registrations

Securities brokerage filings

FBI Telephone Applications

CHIPS

Contact info:

Clearing House Payment Co., LLC

100 Broad St.

New York, NY 10004

tel. 212-612-9334

fax 212-612-9253

314(a) REQUESTS

- Credit bureau subpoenas will not get us accounts that are not linked to any credit, e.g. savings, checking accounts.
- A 314(a) request requires every U.S. bank to check and see if has or has ever had any account with named individuals or entities.

314(a) REQUESTS

Q. Do we need a subpoena in order to make a 314(a) request?

A. No. FBI agents can make these requests internally.

314(a) REQUESTS

- The only requirement for a 314(a) request is that it must pertain to a terrorism or significant money laundering investigation.

314(a) REQUESTS

Q. How long does it take to get the results back from the 314(a) request?

A. Less than 3 weeks.

FINDING FOREIGN BANK ACCOUNTS

- Methods:
 1. EGMONT request.
 2. Mutual Legal Assistance Treaties.

EGMONT REQUEST

- EGMONT is a network of countries that will, at the least, search for suspicious transaction reports for the names that we submit to them.
- Over 100 member countries, some will provide more info than others.
- Must be a terrorism financing or significant money laundering investigation.
- Cannot be a fishing expedition of all countries, you must specify the country that is being requested.

EGMONT REQUEST

Q. How do we submit an EGMONT request?

A. Can be done right through the FBI Intranet at <http://30.30.204.26/fincen/egmont.htm> . List of participating countries is also on that site.

EGMONT REQUEST

- No subpoenas, no MLAT request, no AUSA involvement.
- Time for return of info varies from country to country but average turnaround time is 30-60 days.

MLAT

- Mutual Legal Assistance Treaties are now in effect between the U.S. and at least 60 other countries. They require countries to help each other gather evidence needed to investigate or prosecute crimes.

MLAT

- Best way to go with MLAT: Call OIA directly: 202-514-0000 and ask for one of the attorneys for the country where your investigation needs to take place.
- Find out the realistic time frame and write it yourself. Go-by can be e-mailed to you & no AUSA has to sign the request.
- Send all the stuff to the same OIA attorney so it can be tracked.

INTERNATIONAL MONEY LAUNDERING

CORRESPONDENT ACCOUNTS

- Every foreign bank needs one in order to transact business in U.S. dollars and to exchange currency.

CORRESPONDENT ACCOUNTS

FOREIGN BANK



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graph TD; A[FOREIGN BANK] --> B[U.S. CORRESPONDENT ACCOUNT]
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U.S. CORRESPONDENT
ACCOUNT

CORRESPONDENT ACCOUNTS

- When someone wires money to or from a foreign bank, or cashes a check in the United States which is drawn on a foreign bank, the foreign bank generally uses its U.S. correspondent account to facilitate the transaction.

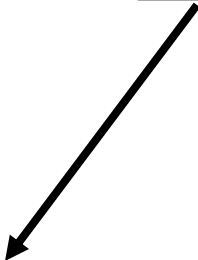
CORRESPONDENT ACCOUNTS

- So we can serve a subpoena on a U.S. correspondent account requiring production of records of all wire transfers or checks passing through the correspondent bank in the name of our subjects.

FOREIGN BANK

AGENT
WITH GRAND
JURY SUBPOENA

U.S. CORRESPONDENT
ACCOUNT



CORRESPONDENT ACCOUNTS

- Best move when serving subpoena on correspondent bank is to require production to be made in electronic format, in other words on CD-ROM.

CORRESPONDENT ACCOUNTS

- Q: How do we find the U.S. correspondent account of a foreign bank?
- A: Thomson's Global, www.tgbr.com .

CORRESPONDENT ACCOUNTS

- Q. Can we subpoena the correspondent bank for the signatory and other information regarding the account holder at the foreign bank (in other words, the subject's bank account which is held at the foreign bank)?
- A. No, the correspondent bank will not have access to that information, and the foreign bank itself is not subject to the U.S. court's jurisdiction.

CATCHING THE MONEY LAUNDERERS

- Q. What if the money laundering or terrorist financing subjects are outside the United States or cannot even be tied to the money?
- A. We go after the money using 18 U.S.C. 981(k) and flush out the perps.

18 U.S.C. 981(k)

- It is an in rem forfeiture statute that allows us to seize criminal proceeds even though they are in a foreign country that we could not ordinarily reach.
- This is a new law that has been used approximately twenty times so far. All of these cases have been non-terrorism criminal cases although the law was passed as part of the Patriot Act.

18 U.S.C. 981(k)

- Example of how the new law has been used and can be used in any terrorism financing/money laundering case where the criteria are met.
- Nigerian e-mail fraud.

THE VICTIMS

Q: Would anyone really believe an e-mail message that says that some stranger wants to give you \$40 million?

A: Yes, it is unbelievable.

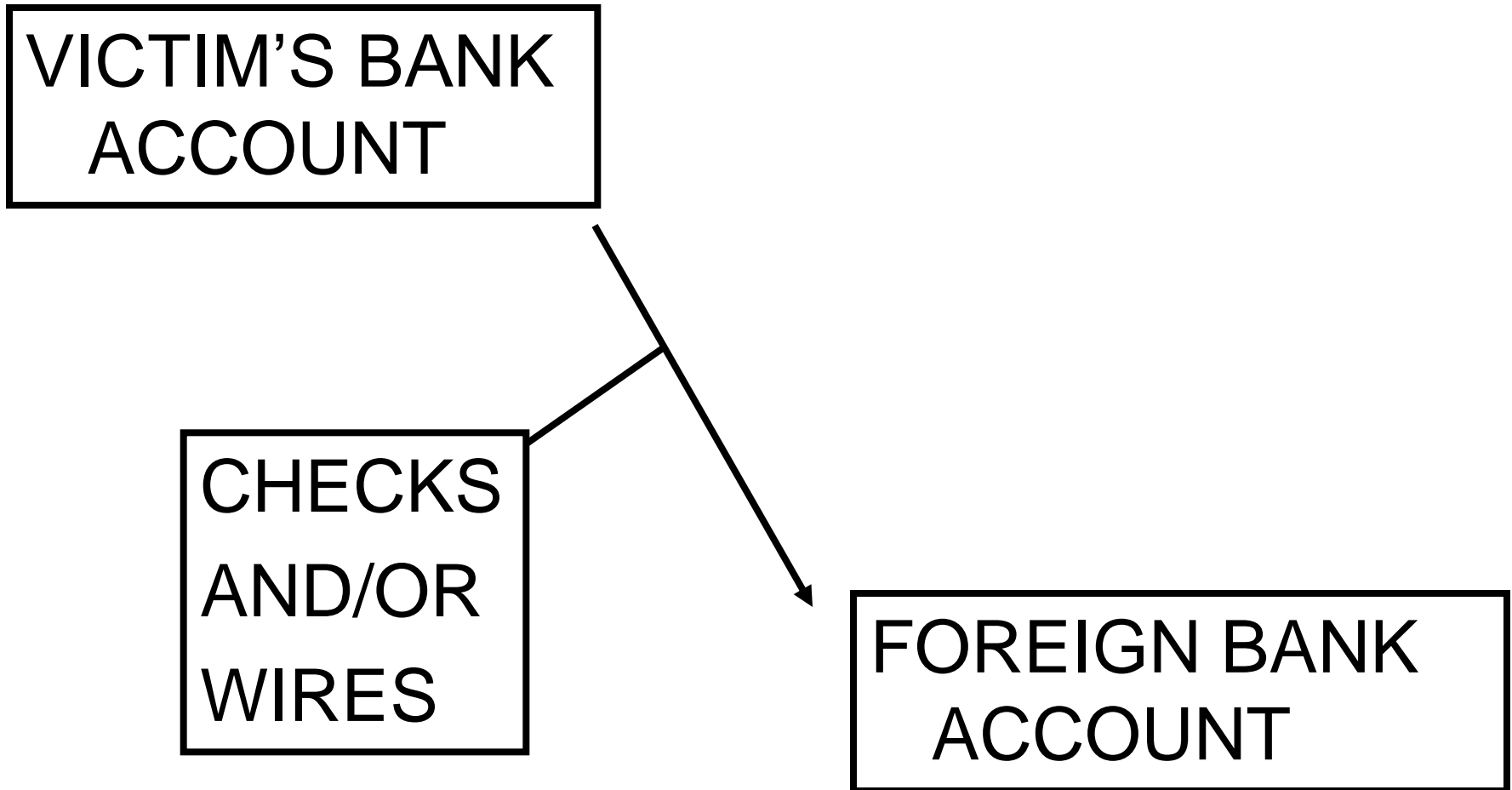
THE SCAMS

- 1. The inheritance

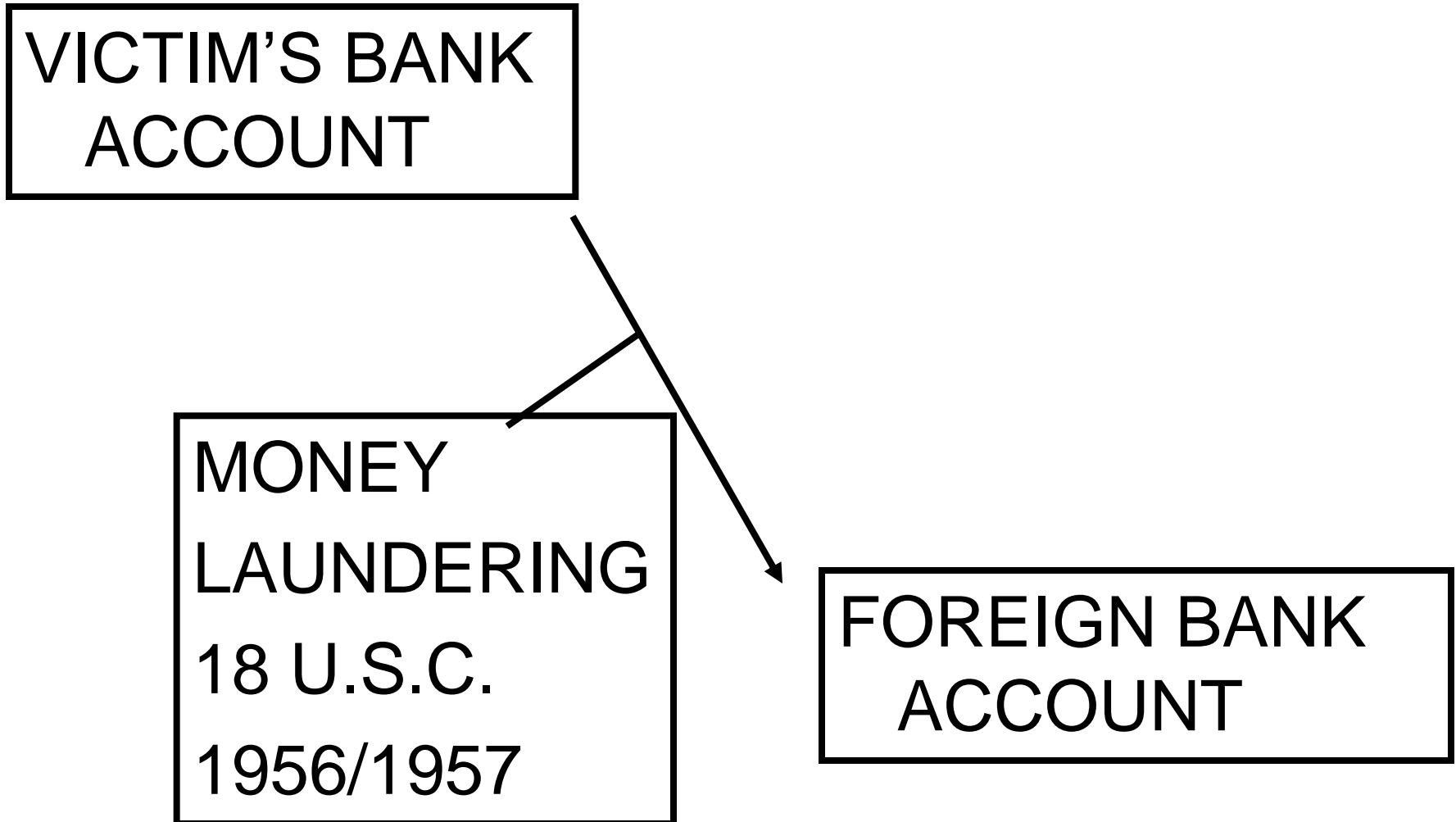
THE SCAMS

- 2. The check cashing opportunity

TRACING THE MONEY



TRACING THE MONEY



MONEY LAUNDERING

- 18 U.S.C. 1957= engaging in a money laundering transaction over \$10,000.
- Cashing the check or receiving the wire transfer (if it is more than \$10,000)= money laundering if we can prove that the owner of the foreign bank account knew it was derived from criminal activity.

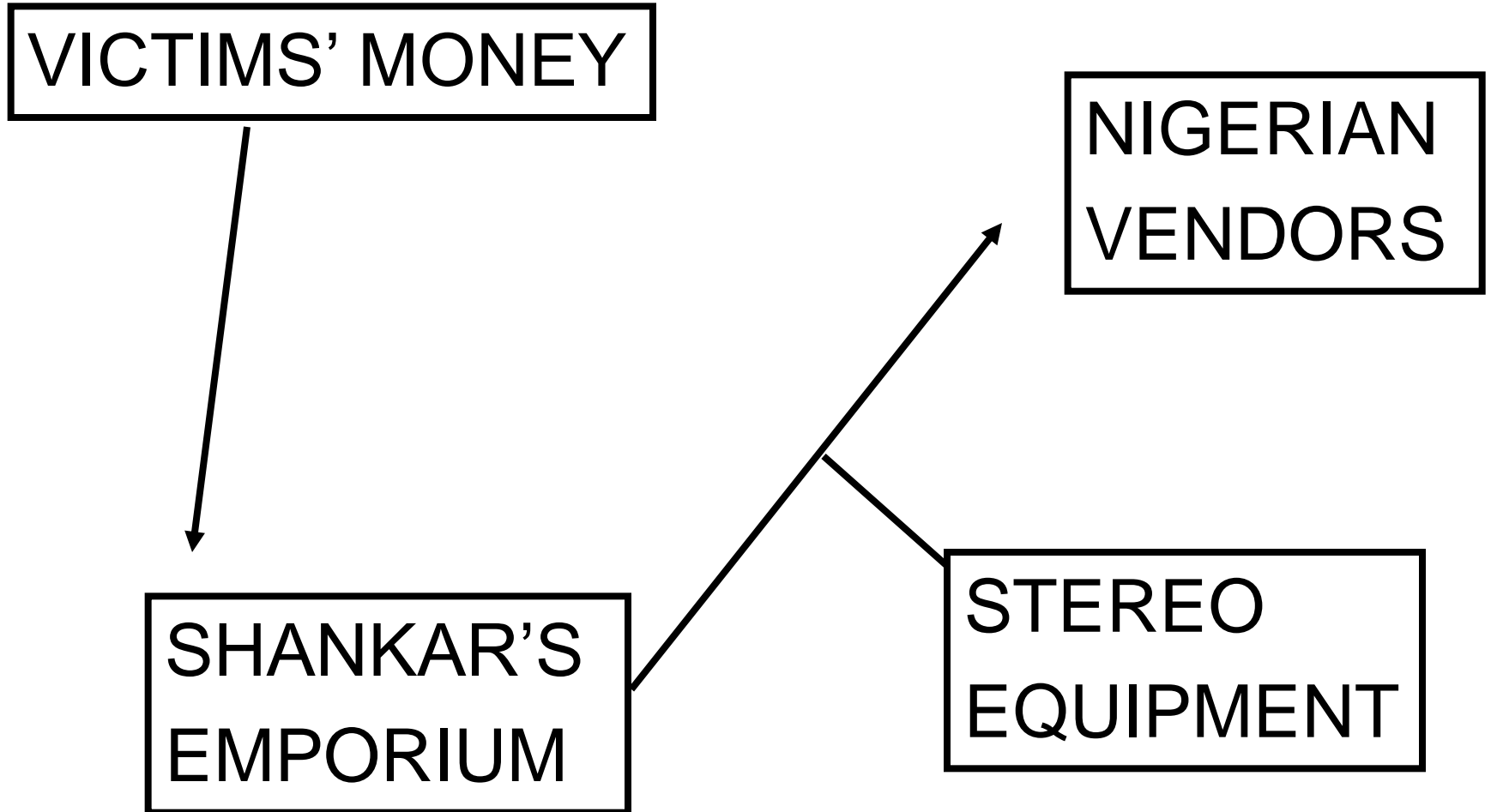
MONEY LAUNDERING

- 18 U.S.C. 1956=engaging in a money laundering transaction to promote the criminal activity or to disguise the nature or source of the proceeds.
- Cashing the check or receiving the wire transfer=money laundering if we can prove that the owner of the foreign account knew that it was criminal proceeds.

THE SHANKAR'S PATTERN

- Shankar's Emporium= legit Singapore company, exports stereo equipment around the world.

THE SHANKAR'S PATTERN



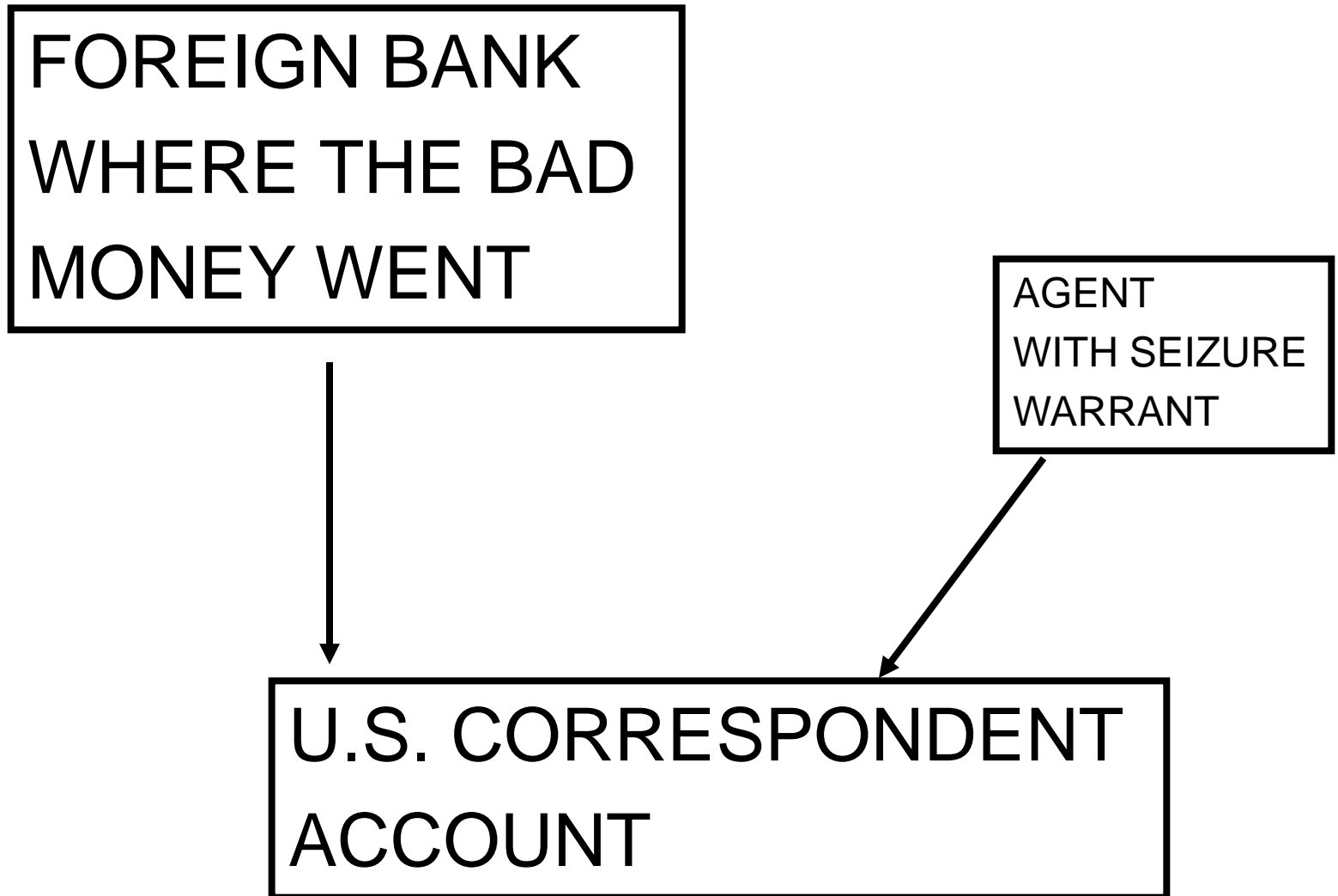
CIRCUMSTANTIAL EVIDENCE

- 1. The foreign company is shipping goods to Nigerian vendors but receiving payment from individuals in another part of the world.
- 2. The payments are being sent to the foreign company in increments and amounts that are not in conformance with a normal commercial credit transaction.
- **AND OTHERS**

FORFEITURE

- 18 U.S.C. 981(k)=we can seize money from the foreign bank's correspondent account up to the amount of criminal proceeds traced to the foreign bank

981(k)



981(k)

Q: Does the foreign bank have to be involved in the crime since we are taking their money and not the criminal's?

A: No, this is the beautiful thing about this statute.

981(k)

Q: Does the foreign bank have any defense?

A: Yes, if they can show that they had “discharged their obligation” to the account holder prior to the execution of the seizure warrant.

981(k)

Q. Does it take forever to get all of that done?

A. Not at all.

981(k)

- Bottom line: If the country where the foreign bank is located has a treaty with us and the U.S. government is happy with how the foreign country has honored that treaty, approval for a 981(k) seizure will not be granted.
- Leaves only the MLAT/letters rogatory option.

981(k)

- Another advantage to this new law: Once we have identified the perpetrators and indicted them, if they fail to answer the criminal warrant then they cannot challenge the forfeiture of their money.
28 U.S.C. 2466 (fugitive disentitlement statute).

CATCHING THE MONEY LAUNDERERS

- Q. What if we have not yet identified the people who are responsible for having received the laundered proceeds?
- A. They are going to have to identify themselves in the court papers or they are going to lose their money.

CATCHING THE MONEY LAUNDERERS

- So when the money launderers come to court to try to get their money back,

THEY'RE BUSTED

EMERGING MONEY LAUNDERING THREATS

- Stored value devices
- Shell corporations
- Electronic & virtual currency
- Unlicensed money remitting
- Charities
- International Emergency Economic Powers Act (IEEPA) bank cases
- Kleptocracy
- Trade-based money laundering (including false invoicing of merchandise and commodity-based misrepresentations)
- Bulk Cash Smuggling
- Casinos
- Insurance policies