UNCERTAIN ATTORNEY-CLIENT PRIVILEGE PROVIDES NO ASSURANCE: THE IRS FORM 8300 DILEMMA IN UNITED STATES v. SINDEL

An uncertain privilege . . . is little better than no privilege at all.¹

INTRODUCTION

Title 26 United States Code section 6050I ("Section 6050I") requires any person in a trade or business to report cash receipts of more than $10,000 on Internal Revenue Service ("IRS") Form 8300.² Form 8300 has become a concern for lawyers and their cash-paying clients because the IRS has interpreted "trade or business" to include the practice of law.³ Despite lobbying efforts by the legal community, Congress has refused to make an exemption from this reporting requirement for attorneys.⁴

In its recent decision in United States v. Sindel,⁵ the United States Court of Appeals for the Eighth Circuit considered the effect of Section 6050I on the attorney-client privilege, the Sixth Amendment right to counsel, the Fifth Amendment protection against self-incrim-

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(a) Cash receipts of more than $10,000. — Any person —
(1) who is engaged in a trade or business, and
(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns. — A return is described in this subsection if such return —
(1) is in such form as the Secretary may prescribe,
(2) contains —
(A) the name, address, and TIN [Taxpayer Indentification Number] of the person from whom the cash was received,
(B) the amount of the cash received,
(C) the date and nature of the transaction, and
(D) such other information as the Secretary may prescribe.

Id.

³. Ellen S. Podgor, Form 8300: The Demise of Law as a Profession, GEO. J. LEGAL ETHICS 485, 488 (1992). Ellen S. Podgor stated that "both section 6050I and Form 8300 undermine the relationship of trust and confidence that is essential between an attorney and client." Id.

⁴. See infra notes 67-68 and accompanying text.

⁵. 53 F.3d 874 (8th Cir. 1995).
nation, and the First Amendment right to freedom of speech. The Eighth Circuit recognized in Sindel a limited attorney-client privilege when providing the information requested on Form 8300 would effectively reveal a client's "confidential communication." The court concluded, however, that the United States Constitution does not impede the reporting by attorneys of clients' cash payments to the IRS.

This Note will first examine the Eighth Circuit's decision in Sindel and will then review the history and policy justifications for Section 6050I and how courts have dealt with the effects of its reporting requirements on the attorney-client relationship. This Note will then analyze the various defenses to completion of Form 8300. This Note focuses on the common law doctrine of attorney-client privilege, the Fifth Amendment protection against self-incrimination, and the Sixth Amendment right to counsel as each of these concepts applies to Section 6050I. This Note concludes that neither the Fifth nor Sixth Amendment absolves a lawyer from his or her duty to file Form 8300 when a client makes a large cash payment. Finally, this Note recognizes that, although certain circumstances could invoke the attorney-client privilege with respect to information required by Form 8300, Congress has intentionally abrogated the privilege by enacting Section 6050I.

FACTS AND HOLDING

Richard Sindel provided legal services to John Doe and Jane Doe. Each client paid Sindel more than $10,000 in cash.


7. Sindel, 53 F.3d at 876-77.
8. Id. at 877-78.
9. See infra notes 14-57, 58-61, 189-234 and accompanying text.
10. See infra notes 277-386 and accompanying text.
11. See infra notes 277-386 and accompanying text.
12. See infra notes 280-315 and accompanying text.
13. See infra notes 360-76 and accompanying text.
14. United States v. Sindel, 53 F.3d 874, 875 (8th Cir. 1995). The Eighth Circuit referred to the clients as "John Doe" and "Jane Doe" to protect the clients' identities. Sindel, 53 F.3d at 875.
15. Sindel, 53 F.3d at 875. The receipts resulting in this controversy involved one cash payment of $53,160 from John Doe and two cash payments of $10,000 each from Jane Doe. Id.
As required by the Internal Revenue Service ("IRS"), Sindel reported these cash transactions on the August 1988 version of IRS Form 8300.\textsuperscript{16} Form 8300 requires the filer to report, among other things, the payor's name, address, social security number, and occupation as well as the amount of the cash payment.\textsuperscript{17} However, Sindel omitted identifying information required on the form.\textsuperscript{18} Sindel attached a letter to each of the forms, stating that to disclose the information requested would "violate ethical duties owed said client, and constitutional and/or attorney-client privileges that the reporting attorney is entitled or required to invoke."\textsuperscript{19}

At the IRS' request, Sindel later withdrew the forms filed on behalf of Jane Doe and replaced them with the January 1990 version of Form 8300.\textsuperscript{20} The January 1990 version of Form 8300 was essentially the same as the August 1988 version, except that the newer version required the reporting party to check a box if the payment was a "suspicious transaction."\textsuperscript{21} Sindel left this box blank and once again omitted the required identifying information.\textsuperscript{22}

The IRS served Sindel with a summons requesting the missing information.\textsuperscript{23} The IRS contended that the forms were incomplete because they did not disclose the payor's name, address, and tax identification number.\textsuperscript{24} When Sindel failed to comply, the IRS brought an enforcement action in the United States District Court for the Eastern District of Missouri.\textsuperscript{25} Sindel argued that disclosure of the additional information would violate his clients' Fifth and Sixth Amendment constitutional rights as well as their attorney-client privilege.\textsuperscript{26} Sindel further argued that Rule 1.6 of the Model Rules of Professional Conduct prescribed his duty to maintain his clients' identities in confi-


\textsuperscript{17} \textit{See} appendix to examine Form 8300.

\textsuperscript{18} Sindel, 53 F.3d at 875.

\textsuperscript{19} \textit{Id.} (quoting the letter Sindel attached to the IRS forms).

\textsuperscript{20} \textit{Id.} at 875-76; \textit{see} appendix to examine Form 8300.

\textsuperscript{21} 53 F.3d at 876. A suspicious transaction is "[a] transaction in which it appears that a person is attempting to cause this report not to be filed or a false or incomplete report to be filed; or where there is an indication of possible illegal activity" as defined by the instructions to the 1990 version of Form 8300. \textit{See} appendix to examine Form 8300.

\textsuperscript{22} Sindel, 53 F.3d at 875-76.

\textsuperscript{23} \textit{Id.} at 876.


\textsuperscript{25} Sindel, 854 F. Supp. at 596.

\textsuperscript{26} \textit{Id.} at 596-97; \textit{see} Joint Reply Brief of Appellants at 1-23, United States v. Sindel, 53 F.3d 874 (8th Cir. 1995) (Nos. 94-2683, 94-2684).
dence and that Form 8300 was in direct conflict with this ethical obligation.\(^{27}\)

The district court reviewed information in an in-camera proceeding and convened an open court hearing.\(^{28}\) During the in-camera portion, the district court considered Sindel's testimony that the production of the clients' names would be incriminating.\(^{29}\) The district court stated, however, that the in-camera portion of the testimony had no bearing on its decision because the incriminating nature of the testimony was not relevant to the court's analysis.\(^{30}\)

The district court rejected Sindel's Sixth Amendment argument.\(^{31}\) The court stated that the Sixth Amendment's right to counsel guarantees an effective advocate and does not ensure that a defendant will be represented by the lawyer whom the defendant prefers.\(^{32}\) The court rejected Sindel's Sixth Amendment argument, stating that Title 26 United States Code section 6050I ("Section 6050I") did not prevent clients from receiving legal advice.\(^{33}\) The court concluded that, at most, Section 6050I restricted the method of compensating an attorney.\(^{34}\) The court also rejected Sindel's Fifth Amendment argument, noting.

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\(^{27}\) Sindel, 854 F. Supp. at 596. Rule 1.6 of the Missouri Rules of Professional Conduct provides:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

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28. Sindel, 53 F.3d at 876.
29. Sindel, 854 F. Supp. at 598. The district court considered the applicability of the last link doctrine and concluded that the doctrine did not apply to this case. \(\text{Id.} \) The last link doctrine protects nonprivileged information where "the incriminating nature of the privileged communications has created in the client a reasonable expectation that the information would be kept confidential." \(\text{Id.} \)
30. Sindel, 854 F. Supp. at 598. The court questioned the vitality of the last link doctrine and noted that it was not aware of any cases that suggested that the doctrine had been accepted by the Eighth Circuit. \(\text{Id.} \)
32. \(\text{Id.} \) (quoting Wheat v. United States, 486 U.S. 153, 159 (1988)).
33. \(\text{Id.} \) at 598.
34. \(\text{Id.} \) at 598-99. The court noted that "[Section 6050I] does not prevent a would-be client from, for example, bartering with an attorney for services." \(\text{Id.} \)
that the same argument had been consistently rejected in similar cases.\textsuperscript{35}

The district court also rejected Sindel’s argument that the attorney-client privilege protected information requested on IRS Form 8300.\textsuperscript{36} The court recognized that the protection of the attorney-client privilege only extends to disclosures “that are necessary to obtain informed legal advice.”\textsuperscript{37} The court also found that the attorney-client privilege succumbs to “countervailing law or strong public policy.”\textsuperscript{38} The court further found that the attorney-client privilege should be strictly and narrowly confined.\textsuperscript{39} The district court therefore granted the IRS’ motion, enforcing its summons to supply the information missing on Form 8300.\textsuperscript{40}

Sindel appealed the district court’s decision to the United States Court of Appeals for the Eighth Circuit.\textsuperscript{41} On appeal, the Eighth Circuit vacated the order requiring Sindel to provide the information regarding Jane Doe and affirmed the order regarding John Doe.\textsuperscript{42} The Eighth Circuit first considered Sindel’s argument based on the attorney-client privilege.\textsuperscript{43} After reviewing the in-camera testimony, the Eighth Circuit concluded that Sindel could not reveal Jane Doe’s payment information without revealing the subject matter of a “confidential communication.”\textsuperscript{44} Therefore, the court held that the attorney-client privilege protected information required on Form 8300 with respect to Jane Doe.\textsuperscript{45} Finding that similar constraints did not exist with respect to John Doe, the court held that the attorney-client privilege would not protect information regarding his payments.\textsuperscript{46}

Next, the Eighth Circuit considered Sindel’s argument that the Missouri Rules of Professional Conduct protected John Doe’s information.\textsuperscript{47} Noting that “Congress cannot have intended to allow local rules of professional ethics to carve out fifty different privileged ex-
emptions," the court stated that Missouri Rule of Professional Conduct 1.6 did not broaden the exemption afforded lawyers under the attorney-client privilege in the reporting of confidential information.\textsuperscript{48} 

The Eighth Circuit then rejected each of Sindel's constitutional arguments.\textsuperscript{49} The court found that, because a client is free to pay in forms other than cash, the requirements imposed by Section 6050I do not violate the Sixth Amendment.\textsuperscript{50} Because the court held that the attorney-client privilege protected the information with respect to Jane Doe, it did not decide the issue of whether the "suspicious transaction" box violated the Sixth Amendment.\textsuperscript{51} The court also declined to decide whether, by allowing prosecutors to subpoena Sindel to testify, Section 6050I would disqualify Sindel from representing John Doe in the future.\textsuperscript{52} In rejecting Sindel's Fifth Amendment arguments, the court noted that the privilege against self-incrimination applied only to the defendant and not to third parties such as the defendant's attorney.\textsuperscript{53} Because the IRS would only elicit information that Sindel's clients had already given him, the court found that the Fifth Amendment did not prevent disclosure as requested on Form 8300.\textsuperscript{54} 

Finally, the Eighth Circuit rejected Sindel's First Amendment claim that completion of Form 8300 constituted "compelled speech."\textsuperscript{55} The court found that the "First Amendment protection against compelled speech" only applied to compulsion of political or ideological messages.\textsuperscript{56} Because the information on Form 8300 did not compel either of these types of speech, the court held that the First Amendment did not prevent disclosure.\textsuperscript{57} 

\begin{footnotesize}
\textsuperscript{48} Id. at 877. The attorney-client privilege only protects client confidences in proceedings in which a lawyer may be called as a witness or required to produce evidence. RULES GOVERNING THE MO. BAR AND JUDICIARY 4, 1.6 cmt. (1994). The rule of client-lawyer confidentiality applies to communications and information regarding representation of a client. Id.
\textsuperscript{49} Sindel, 53 F.3d at 877-78.
\textsuperscript{50} Id. at 877.
\textsuperscript{51} Id. Because Sindel was excused from reporting any of Jane Doe's excluded information, the court did not consider the constitutionality of the January 1990 Form. Id. The January 1990 version of Form 8300 was essentially the same as the August 1988 version, except that the newer form required the reporting party to check a box if the payment was a "suspicious transaction." Id. at 876; see appendix to examine Form 8300.
\textsuperscript{52} Sindel, 53 F.3d at 877.
\textsuperscript{53} Id. (citing Couch v. United States, 409 U.S. 322, 328 (1973)).
\textsuperscript{54} Id.
\textsuperscript{55} Id. at 878.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\end{footnotesize}
BACKGROUND

TITLE 26 UNITED STATES CODE SECTION 6050I

Congress enacted Title 26 United States Code section 6050I ("Section 6050I") as a part of the Deficit Reduction Act of 1984.58 Attempting to control the federal budget deficit, Congress enacted Section 6050I to tax some of the cash income that had previously evaded taxation.59 Congressional reports stated that "approximately 80% of the revenue lost through noncompliance is due to underreporting of income."60 Congress determined that the reporting of large cash transactions would help to identify taxpayers with substantial cash incomes and thus enacted Section 6050I.61

In pertinent part, Section 6050I provides that any person who, in the course of trade or business, receives more than $10,000 in cash in one or more related transactions, must report that transaction to the Internal Revenue Service ("IRS").62 Section 6050I also requires the

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60. Staff of Joint Comm. on Taxation General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984 491 (1984). The IRS estimated that approximately $250 billion of income went unreported in 1981, reducing tax receipts by an estimated $55 billion. Id. An additional $9 billion in revenue was lost due to underreported income connected with illegal activities. Id.


62. 26 U.S.C. § 6050I(a) (1988). Section 6050I provides in pertinent part:

(a) Cash receipts of more than $10,000. — Any person —

(1) who is engaged in a trade or business, and
(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns. — A return is described in this subsection if such return —

(1) is in such form as the Secretary may prescribe,
(2) contains —

(A) the name, address, and TIN (Taxpayer Indentification Number) of the person from whom the cash was received,
(B) the amount of the cash received,
(C) the date and nature of the transaction, and
(D) such other information as the Secretary may prescribe.

Id.
recipient of these cash payments to report: "(A) the name, address, and TIN [Taxpayer Identification Number] of the person from whom the cash is received, (B) the amount of cash received, (C) the date and nature of the transaction, and (D) such other information as the Secretary may prescribe." Treasury regulations accompanying Section 6050I require:

The name, address, and taxpayer identification number of the person on whose behalf the transaction was conducted (if the recipient knows or has reason to know that the person from whom the cash was received conducted the transaction as an agent for another person); . . . and any other information required by Form 8300.

When Congress first considered Section 6050I, the legal community was notably absent from the debate. Furthermore, there were no discussions at the hearings on Section 6050I regarding the implications that this legislation would have when applied to the legal profession. When Congress considered technical corrections in 1985, the legal community voiced objection to application of the reporting requirements of Section 6050I to attorneys. However, Congress rejected the legal community's arguments, and neither the revised tax code nor the Treasury Regulations exempt lawyers from the reporting requirements of Section 6050I.

**INTERNAL REVENUE SERVICE FORM 8300**

IRS Form 8300 implements Section 6050I. The January 1990 version of Form 8300 is divided into four parts. Part I of Form 8300 requires the filer (payee) to identify the individual from whom the

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65. See Podgor, 5 GEO. J. LEGAL ETHICS at 492. Podgor stated that "[o]pposition to application to Section 6050I to attorneys appeared after its adoption." Id. (emphasis added). Furthermore, Podgor stated that "[n]either the American Bar Association nor criminal defense organizations were present to voice opposition at the hearings or when the vote passing this currency reporting requirement was taken." Id. at 491-92.
68. Goldberger & Dubin, P.C., 935 F.2d at 503. See McBride, 23 CRIM. L. BULL. at 221; 26 U.S.C. § 6050I (1988) (failing to exempt attorneys from the reporting requirements); but see United States v. Euge, 444 U.S. 707, 714 (1980) (finding a similar statute, Title 26 of the United States Code Section 7602, to be "subject to the traditional privileges even though the statute's language does not specifically make an exception for the attorney-client privilege").
70. See appendix to examine Form 8300.
cash was received and requests the individual's address, social security number, occupation, and method of verification.\textsuperscript{71} Part II of Form 8300 requests this same information to identify the person on whose behalf the transaction was conducted.\textsuperscript{72} Part III of Form 8300 requires the filer to describe the transaction and method of payment, including installment arrangements.\textsuperscript{73} A box at the top of Form 8300 requires filers to check whether the filer believes the payment involved is a "suspicious transaction."\textsuperscript{74} A suspicious transaction is "[a] transaction in which it appears that a person is attempting to cause this report not to be filed or a false or incomplete report to be filed; or where there is an indication of possible illegal activity" as defined by the instructions for the 1990 version of Form 8300.\textsuperscript{75} Part IV of Form 8300 identifies the filing party and includes a signature line on which the filer declares that the information is true, correct, and complete.\textsuperscript{76}

\textbf{Missouri Rule of Professional Conduct 1.6}

When filing Form 8300, Missouri lawyers are faced with a conflict between the Missouri Rules of Professional Conduct ("Missouri Rules") and the reporting requirements of Section 6050I.\textsuperscript{77} Missouri Rule 1.6 requires attorneys to hold confidential "all information relating to representation of a client."\textsuperscript{78} The Missouri Rules do not contain

\begin{itemize}
\item \textsuperscript{71} \textit{Id.}
\item \textsuperscript{72} \textit{Id.}
\item \textsuperscript{73} \textit{Id.}
\item \textsuperscript{74} \textit{Id.} See Podgor, \textsc{5 Geo. J. Legal Ethics} at 497.
\item \textsuperscript{75} See appendix to examine Form 8300.
\item \textsuperscript{76} \textit{Id.}
\item \textsuperscript{77} \textit{Compare Rules Governing the Mo. Bar and Judiciary 4, 1.6 (1994) (preventing attorneys from revealing client information without the client's consent) with 26 U.S.C. § 6050I (1988) (failing to exempt attorneys from reporting cash transactions in excess of $10,000).}
\item \textsuperscript{78} \textit{Rules Governing the Mo. Bar and Judiciary 4, 1.6 (1994).} The rule provides:
\begin{enumerate}
\item A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
\item A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
\begin{enumerate}
\item to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
\item to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.
\end{enumerate}
\end{enumerate}
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\textit{Id.}
a provision allowing a lawyer to disclose otherwise protected information even if such disclosure is necessary to comply with the law.\textsuperscript{79}

Formal Ethics Opinions issued by State Bar Associations differ on whether attorneys can ethically comply with Section 6050I.\textsuperscript{80} However, the Federal Court Committee on Attorney Conduct ("Committee") considered the conflict between Section 6050I and Model Rule of Responsibility 1.6 ("Rule 1.6") and concluded that a lawyer does not act unethically by supplying client identity and fee information on Form 8300.\textsuperscript{81} The Committee stated that "[i]f disclosure is required by law, it is never unethical under Rule 1.6(b) to comply with the law."\textsuperscript{82}

The comments to the Model Rules identify the distinction between the attorney-client privilege and the "rule of confidentiality" established by Rule 1.6.\textsuperscript{83} The attorney-client privilege only protects client confidences in proceedings in which a lawyer may be called as a witness or required to produce evidence.\textsuperscript{84} The rule of confidentiality applies to all communications and information regarding the representation of a client.\textsuperscript{85}

\textsuperscript{79} See Rules Governing the Mo. Bar and Judiciary 4, 1.6 (1994) (failing to provide an exemption for lawyers when the law compels disclosure of privileged information). Some states include a provision in the Rules of Conduct that permits a lawyer to divulge otherwise privileged information when the law requires disclosure of information that may violate this confidence. See e.g., Hi. Rules of Prof. Conduct, Rule 1.6(b)(6) (1995) (authorizing a lawyer to disclose confidential information in order to comply with the law), Ks. R. Rule 226 RPC MRPC 1.6(b)(2) (1994) (authorizing a lawyer to disclose confidential information in order to comply with the law), Md. R. Ct. Admin. Rule 1230, 1.6(b)(4) (1995) (authorizing a lawyer to disclose confidential information in order to comply with the law).

\textsuperscript{80} See, e.g., Ind. State Bar Assn. Legal Ethics Comm, Opinion 1 of 1995 (1995) (advising the lawyer to warn the client of the implications of 26 U.S.C. \$ 6050I and IRS Form 8300); Alaska State Bar Assn. Ethics Comm., Opinion 93-3 (1993) (stating that "a lawyer may comply with an IRS requirement to disclose client identities on Form 8300"); Washington Formal Ethics Opinion 189 (1991) (stating that a "lawyer must withhold identifying information . . . and must litigate the disclosure issue if the matter is pursued in court"); Ohio Supreme Court Ethics Opinion 90-4 (1990) (stating that it is unethical for a lawyer to reveal the identity of a client unless an exception exists); Arizona State Bar Assn. Ethics Comm., Opinion 87-3 (1987) (stating that "no conflict exists between the reporting rule and a lawyer's duty of confidentiality").


\textsuperscript{82} Monnat, 853 F. Supp. at 1309.

\textsuperscript{83} See Rules Governing the Mo. Bar and Judiciary 4, 1.6 cmt. (1994). The comment to Rule 1.6 stated that:

The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client, and the rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law.

\textit{Id.}

\textsuperscript{84} Rules Governing the Mo. Bar and Judiciary 4, 1.6 cmt. (1994).

\textsuperscript{85} \textit{Id.}
THE ATTORNEY-CLIENT PRIVILEGE

Many lawyers object to supplying client identity and fee information on Form 8300 and argue that the attorney-client privilege protects such information from disclosure. The attorney-client privilege once belonged to the lawyer instead of the client. Thus, historically, the attorney's "point of honor," not the client's desire to keep the communications confidential, controlled when the privilege was asserted. The attorney could waive the privilege regardless of the client's wishes. The "point of honor" principle is no longer valid, however, and the privilege now belongs exclusively to the client.

Under the attorney-client privilege today, only the client may waive the privilege. The purpose of the privilege is "to promote freedom of consultation of legal advisers by clients." At least one well-known commentator has urged a narrow interpretation of the privilege and has suggested that the privilege should not be applied beyond what is necessary to serve its limited purpose.

In federal court, the attorney-client privilege is governed by Rule 501 of the Federal Rules of Evidence. Rule 501 provides:

Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness shall be governed by the principles of common law as they may be interpreted by the courts of the United States.

The Federal Common Law of Attorney-Client Privilege

The United States Supreme Court has consistently applied the attorney-client privilege narrowly. In Fisher v. United States, the Supreme Court examined the attorney-client privilege and the Fifth

86. See Podgor, 5 GEO. J. LEGAL ETHICS at 516.
87. McBride, 23 CRM. L. BULL. at 232. See 8 WIGMORE, EVIDENCE, § 2290, at 543 (McNaughton Rev. 1961) [hereinafter 8 WIGMORE] (stating that the attorney-client privilege was "an objective not a subjective [standard] and consideration for the oath and the honor of the attorney rather than for the apprehensions of his client").
88. See 8 WIGMORE, supra note 87, § 2290 at 543. The "point of honor" was "a consideration for the oath and honor of the attorney" whose first duty was to keep his client's secrets in confidence. Id.
89. Id. at 545.
90. Id. § 2291 at 543-45. See McBride, 23 CRM. L. BULL. at 232.
92. 8 WIGMORE, supra note 87, § 2291 at 545.
93. Id. at 554.
94. McBride, 23 CRM. L. BULL. at 225.
95. FED. R. EVID. 501.
Amendment protection against self-incrimination. In Fisher, the Court resolved conflicting positions of the United States Courts of Appeals for the Third and Fifth Circuits regarding enforcement of IRS summonses to produce clients' documents that were in their attorneys' possession. In each case, the IRS summoned an attorney to produce accounting documents received from a client.

The IRS brought actions in the United States District Courts for the Northern District of Texas and the Eastern District of Pennsylvania to enforce its summonses. The respective district courts enforced the summonses, and the taxpayers both appealed. The United States Court of Appeals for the Third Circuit affirmed the Pennsylvania district court's order, holding that, because the taxpayers did not have a possessory interest in the papers, the papers were likewise not immune in their attorney's hands. The United States Court of Appeals for the Fifth Circuit reversed the Texas district court's enforcement order, reasoning that the taxpayer had "a legitimate expectation of privacy with regard to the materials he placed in his attorney's custody," thus retaining constructive possession of the documents and his Fifth Amendment protections.

On appeal, the United States Supreme Court consolidated the cases and considered enforcement of the summons based on the attorney-client privilege. The Supreme Court recognized that the purpose of the attorney-client privilege is "to encourage clients to make full disclosure to their attorneys." The Court also recognized, however, that the privilege effectively withholds "relevant information from the fact-finder" and stated that the privilege should "apply only where necessary to achieve its purpose." The Court further stated that the privilege applied only where the disclosure was made for the purpose of obtaining informed legal advice.

The parties argued to the Court only that the Fifth Amendment's protection against self-incrimination should bar enforcement of the IRS summons. The Court stated that the parties "erroneously relied on the Fifth Amendment" instead of the attorney-client privi-
The Court further noted that when the client is protected from producing the document under the privilege of self-incrimination, the attorney is likewise protected against orders to produce the document because of the attorney-client privilege. The Court recognized that requiring the taxpayer to produce the accountants' work papers would involve substantial compulsion, but it would not compel oral testimony by the taxpayer. Because no oral testimony would be compelled, the taxpayer could not assert the Fifth Amendment privilege against self-incrimination. The Court found that, because no Fifth Amendment rights would be violated, the attorney-client privilege likewise did not protect the documents.

In *Upjohn Company v. United States*, the United States Supreme Court reaffirmed the analysis articulated in *Fisher*. After Upjohn’s independent corporate auditors discovered that a subsidiary had bribed foreign officials for the purpose of obtaining government business, Upjohn’s counsel sought information regarding the payments from its managers at the subsidiaries. Responses were mailed directly to Upjohn’s general counsel, who reviewed them with the company’s outside attorneys. Shortly after Upjohn reported these questionable payments to the Securities and Exchange Commission (“SEC”), the IRS issued a summons demanding that Upjohn produce all of the records related to the lawyers’ investigation into the questionable payments. Upjohn asserted the attorney-client privilege and refused to produce the requested documents.

The government sought enforcement of the summons in the United States District Court for the Western District of Michigan. The district court enforced the summons, adopting a magistrate’s finding that Upjohn waived the attorney-client privilege. On appeal, the United States Court of Appeals for the Sixth Circuit rejected the

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110. *Id.* at 402.
111. *Id.* at 404 (quoting 8 WIGMORE, *supra* note 87, § 2307 at 592).
112. *Id.* at 409. Because the accountants prepared the documents, they did not contain testimonial declarations by the taxpayers. *Id.*
114. *Id.* at 404-14. Although the Court did not directly reference the attorney-client privilege in its holding, the Court nonetheless considered “the relevant body of law and policies that govern the attorney-client privilege” under the Fifth Amendment. *Id.* at 402.
118. *Id.* at 386-87.
119. *Id.* at 387-88. A copy of the SEC report was also submitted to the IRS. *Id.* at 387.
120. *Upjohn Co.*, 449 U.S. at 388.
121. *Id.*
122. *Id.*
district court’s holding that Upjohn waived the attorney-client privilege, but affirmed the lower court’s finding that the attorney-client privilege did not apply in this case.\textsuperscript{123} The Sixth Circuit found that the privilege did not apply because the documents sought were related to communications with “officers and agents not responsible for directing Upjohn’s actions in response to the legal advice.”\textsuperscript{124}

Upjohn petitioned for certiorari to the United States Supreme Court.\textsuperscript{125} On appeal, the Supreme Court reversed the decision of the Sixth Circuit.\textsuperscript{126} The Court reasoned that the attorney-client privilege exists not solely to protect the giving of professional advice to the client, but also to protect the giving of information by the client so that the lawyer can provide sound and informed legal advice.\textsuperscript{127} The Court recognized that the purpose of the attorney-client privilege was to encourage clients to disclose everything to their attorneys.\textsuperscript{128} The Court found that the attorneys needed information that they could not obtain solely from Upjohn’s upper management.\textsuperscript{129}

The Court stated, however, that the attorney-client privilege does not apply to all communications with corporate employees.\textsuperscript{130} Specifically, the Court noted that the protection of the privilege only applies to disclosure of communications and does not extend to underlying facts.\textsuperscript{131} The Court stated, “The client cannot be compelled to answer the question, ‘What did you say or write to your attorney?’ but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney.”\textsuperscript{132} The Court further noted that the attorney’s files could be subject to discovery where those files contained relevant, non-privileged facts essential to preparation of the other party’s case.\textsuperscript{133}

\textsuperscript{123} Id.
\textsuperscript{124} Id. The Court stated that the communications were not “the client’s.” Id.
\textsuperscript{125} Upjohn Co., 449 U.S. at 386.
\textsuperscript{126} Id. at 402.
\textsuperscript{127} Id. at 390 (citations omitted).
\textsuperscript{128} Id. at 389 (quoting Fisher v. United States, 425 U.S. 391, 403 (1976)).
\textsuperscript{129} Id. at 394.
\textsuperscript{130} Id. at 395.
\textsuperscript{131} Id.
\textsuperscript{132} Id. at 396 (quoting Philadelphia v. Westinghouse Elec. Corp., 205 F. Supp. 830, 831 (E.D. Pa. 1962)).
\textsuperscript{133} Id. at 399 (citing Hickman v. Taylor, 329 U.S. 495, 511 (1947)). Chief Justice Warren Burger concurred in part and concurred in the final judgment. Id. at 402. Chief Justice Burger agreed with the rejection of the control group test, but believed that the Court should “articulate a standard that will govern similar cases.” Id. Burger proposed a general rule to govern when a communication is privileged in the context of an employee who speaks with an attorney for the corporation. Id. at 402-03. Burger’s rule provided that:

The attorney must be one authorized by the management to inquire into the subject and must be seeking information to assist counsel in performing any of the following functions:
Application of the Attorney-Client Privilege to Client Identity and Fee Information

As a general rule, the doctrine of attorney-client privilege does not protect client identity and fee information.134 This rule exists because courts ordinarily hold that every litigant is entitled to know his opponent.135 In Baird v. Koerner,136 the United States Court of Appeals for the Ninth Circuit found an exception to this general rule.137 In Baird, Alva C. Baird represented a group of clients regarding outstanding federal tax liability.138 The clients owed $12,706.85 in back taxes, but the IRS had not commenced any investigation regarding these payments.139 Baird sent a cashier's check for the amount due, plus interest, along with a letter to the IRS explaining that the payment was for unnamed clients' back taxes.140 When the IRS issued a summons for the clients' identities, Baird asserted the attorney-client privilege.141

The IRS brought an enforcement action in the United States District Court for the Southern District of California, Central Division.142 The district court held Baird in contempt for refusing to identify his clients.143 Baird appealed to the United States Court of Appeals for the Ninth Circuit.144 The Ninth Circuit applied an exception recog-

(a) evaluating whether the employee's conduct has bound or would bind the corporation;
(b) assessing the legal consequences, if any, of that conduct; or (c) formulating appropriate legal responses to actions that have been or may be taken by others with regard to that conduct.

Id. at 403 (citations omitted). Chief Justice Burger acknowledged that other communications between employees and the corporate counsel could be privileged, but declined to prescribe further details of the privilege. Id. The Chief Justice stated that because Federal Rule of Evidence 501 requires the privilege issue to be resolved by principles of federal common law, the Court had a duty to clarify aspects of the privilege at issue in this case. Id. at 403-04.

134. In re Grand Jury Subpoenas (Anderson), 906 F.2d 1485, 1488 (10th Cir. 1990).
135. Some circuit courts have carved out exceptions to the general rule. Id. See e.g., United States v. Strahl, 590 F.2d 10, 11-12 (1st Cir. 1978), cert. denied 440 U.S. 918 (1979) (applying the legal advice exception); In re Grand Jury Proceedings (Pavlick), 680 F.2d 1026, 1027 (5th Cir. 1982) (applying the last link exception).
136. 8 Wigmore, supra note 87, § 2313 at 609; see United States v. Hodgson, 492 F.2d 1175, 1177-78 (10th Cir. 1974); United States v. Threlkeld, 241 F. Supp. 324, 326 (W.D. Tenn. 1965); Baird v. Koerner, 279 F.2d 623, 630 (9th Cir. 1960); Chirac v. Reinicker, 24 U.S. 280, 294 (1826).
137. Id. at 623 (9th Cir. 1960).
139. Baird, 279 F.2d at 626.
140. Id.
141. Id. at 627.
142. Id. at 623-27.
143. Id. at 627.
144. Id. at 623. The court observed that, under Rule 49(a) of the Federal Rules of Civil Procedure, "the competency of a witness to testify is determined in like manner as
nized in an earlier California case, *Ex Parte McDonough*, which applied a privilege statute. The court held that, under California law, "the name of the client will be considered privileged matter where . . . [it] is material only for the purpose of showing an acknowledgment of guilt on the part of such client of the very offenses on account of which the attorney was employed." Noting that revelation of the clients' identity would acknowledge their guilt, the Ninth Circuit found that the identities of Baird's clients were privileged. The court concluded that the California attorney-client privilege was "absolute" because, unlike the privilege applied to physicians, public officers, reporters, spouses, and clergy, there was no statute limiting the privilege applied to attorneys.

Interpreting the "Baird Exception"

Since *Baird* was announced in 1960, courts have applied its doctrine in primarily three ways: the "legal advice exception," the "last-link exception," and the "confidential communications exception." The "legal advice exception" interpretation of *Baird* protects client identity and fee information where disclosure would likely implicate the client in the criminal activity that was the subject of the legal advice sought. Although courts recognizing the legal advice exception have not expressly overruled this interpretation, the legal advice exception is now of "questionable validity" considering the Ninth Circuit has clarified its *Baird* decision by rejecting this interpretation. Under the "last-link exception" interpretation of *Baird*, a matter is privileged if the government already has so much evidence that re-
revealing the information in question would provide the last link needed to implicate the client in the matter under investigation.153 Similar to the legal advice exception, the validity of the last-link exception is also in question in light of the Ninth Circuit’s subsequent holdings.154

The “confidential communications exception” has been recognized as a more disciplined interpretation of Baird.155 The confidential communication exception applies when disclosure of the client’s identity would effectively disclose an otherwise protected confidential communication.156 The United States Court of Appeals for the Tenth Circuit has held that, in order to protect identity or fee information, the facts of the case must be almost identical to those in Baird.157 The Tenth Circuit stated:

The advice sought must have concerned the case then under investigation and disclosure of the client’s identity would now be, in substance, the disclosure of a confidential communication by the client, such as establishing the identity of the client as the perpetrator of the alleged crime at issue.158

The Confidential Communications Exception Interpreted

In In re Grand Jury Subpoena Duces Tecum (Shargel),159 the United States Court of Appeals for the Second Circuit considered the confidential communications exception in the context of a grand jury subpoena served upon the target’s attorney.160 In Shargel, clients of attorney Gerald Shargel moved to quash a grand jury subpoena that required Shargel to produce documents showing their fee arrangements and payments.161 Eight of the ten individuals regarding whom the subpoena sought information had been indicted for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”).162 Shargel argued that compliance with the subpoena would violate the attorney-client privilege.163 The United States District Court for the Southern District of New York denied the motion to quash the sub-

153. Anderson, 906 F.2d at 1489.
154. Id. at 1489-90.
155. Id. at 1492.
156. Id. at 1491.
157. Id. at 1492.
158. Id.
159. 742 F.2d 61 (2d Cir. 1984).
161. Shargel, 742 F.2d at 61-62.
162. Id. at 62.
163. Id.
poena, stating that compliance would not reveal a confidential communication.\(^{164}\)

On appeal, the United States Court of Appeals for the Second Circuit affirmed the district court and mandated compliance with the subpoenae.\(^{165}\) The Second Circuit noted that potential clients might be dissuaded from seeking legal advice out of fear that their names could be disclosed, but reasoned that requiring the attorney to disclose a consultation would not affect the actual communications with the client.\(^{166}\) The court further found that disclosure did not endanger the quality of the legal advice.\(^{167}\) The court recognized that client identity and fee information are normally not privileged and expressed concern that too broad an expansion of the privilege could become an immunity against the disclosure of corrupt or criminal acts.\(^{168}\) The court stated its position as limiting the attorney-client privilege in terms of protecting lawyers' ability to provide informed legal advice and advocacy.\(^{169}\)

In *Tornay v. United States*,\(^{170}\) the United States Court of Appeals for the Ninth Circuit clarified its interpretation of the scope of the exception set forth by the *Baird* court.\(^{171}\) In *Tornay*, the IRS subpoenaed attorney Robert Wayne for records of financial transactions with his clients, Stephen and Galene Tornay.\(^{172}\) The IRS was investigating the Tornays' tax liability for subsequent years and sought the information from Wayne to establish the amount of their expenditures.\(^{173}\) Wayne did not comply, and the IRS brought an action to enforce the summons in the United States District Court for the Western District of Washington.\(^{174}\) The district court enforced the summons.\(^{175}\) The

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165. *Shar gel*, 742 F.2d at 65.
166. *Id.* at 63. The Second Circuit stated that "a general rule requiring disclosure of the fact of consultation does not place attorneys in the professional dilemma of cautioning against disclosure and rendering perhaps ill-informed advice or learning all the details and perhaps increasing the perils to the client." *Id.*
167. *Shar gel*, 742 F.2d at 63. The Second Circuit recognized that competent legal advice could be rendered even though the attorney might be required to disclose that the fee was a "gem suspected to have been recently stolen, currency with certain serial numbers, or a sum far in excess of the clients reported income." *Id.* (citations omitted).
168. *Shar gel*, 742 F.2d at 62, 64.
169. *Id.* at 64.
170. 840 F.2d 1424 (9th Cir. 1988).
173. *Id.*
174. *Id.*
175. *Id.* at 1426. The district court denied the motion to quash the summons. *Id.*
Tornays appealed, arguing that, among other things, records sought by the IRS were protected by the attorney-client privilege.\textsuperscript{176}

On appeal, the Ninth Circuit considered the Tornays' attorney-client privilege argument in light of its \textit{Baird} precedent.\textsuperscript{177} The court noted that the purpose of the privilege is to encourage clients to make full disclosure to their attorneys, enabling the attorneys to provide informed legal advice.\textsuperscript{178} Considering that the privilege effectively withholds relevant information, the Ninth Circuit stated that the attorney-client privilege "protects only those disclosures — necessary to obtain informed legal advice — which might not have been made absent the privilege."\textsuperscript{179} The court illustrated the scope of its \textit{Baird} decision as follows:

The principle of \textit{Baird} was not that the privilege applied because the identity of the client was incriminating, but because in the circumstances of the case disclosure of the identity of the client was in substance a disclosure of the confidential communication in the professional relationship between the client and the attorney.\textsuperscript{180}

The Ninth Circuit concluded that the correct interpretation of its \textit{Baird} holding is that the exception applies only when revealing the client's identity or the existence of a fee arrangement would disclose information that is tantamount to revealing a confidential professional communication.\textsuperscript{181} Because the Tornays' identities were already known to the IRS and the information sought was only the date, form, and amount of the payments, the court concluded that the \textit{Baird} exception did not apply.\textsuperscript{182}

\section*{Federal Courts Addressing Issues Arising Out of Form 8300 Cases}

Other courts have considered the Form 8300 client disclosure dilemma and defenses similar to those presented in \textit{Sindel}.\textsuperscript{183} Prior to the Eighth Circuit's decision in \textit{Sindel}, no United States Circuit Court of Appeals had found that either the attorney-client privilege or the United States Constitution allowed an attorney to omit client identifying information on Form 8300.\textsuperscript{184} Since the Eighth Circuit's \textit{Sindel} decision, the United States Court of Appeals for the First Circuit has

\begin{itemize}
\item \textsuperscript{176} \textit{Tornay}, 840 F.2d at 1426.
\item \textsuperscript{177} \textit{Id.} at 1426-29.
\item \textsuperscript{178} \textit{Id.} (citing \textit{Wigmore}, supra note 87, §§ 2291-92).
\item \textsuperscript{179} \textit{Id.} (quoting Fisher v. United States, 425 U.S. 391, 403 (1976)).
\item \textsuperscript{180} \textit{Id.} at 1428 (quoting \textit{In re Osterhoudt}, 722 F.2d 591, 593 (9th Cir. 1983)).
\item \textsuperscript{181} \textit{Id.} (citing U.S. v. Hirsch, 803 F.2d 493, 498 (9th Cir. 1986)).
\item \textsuperscript{182} \textit{Id.}
\item \textsuperscript{183} See infra notes 189-234 and accompanying text.
\item \textsuperscript{184} See infra notes 189-222 and accompanying text.
\end{itemize}
also denied enforcement of a summons to compel an attorney to complete Form 8300.185 However, the First Circuit decided its case based on the failure of the IRS to comply with statutory summons procedures.186 The First Circuit did not address the issue of attorney-client privilege or constitutional defenses to completion of Form 8300.187 Therefore, the Eighth Circuit remains the only federal appellate court to hold that the attorney-client privilege can shield an attorney from identifying a client on Form 8300.188

In United States v. Goldberger & Dubin, P.C.,189 the United States Court of Appeals for the Second Circuit upheld enforcement of IRS summonses requesting information not supplied on Form 8300.190 In Goldberger, two New York law firms received cash payments in excess of $10,000 from clients.191 Each firm filed a Form 8300 but did not include information relating to the identity of the payors.192 The IRS sought enforcement of the summonses in the United States District Court for the Southern District of New York.193 The district court held that the attorneys must provide the identity of the payors.194

On appeal, the United States Court of Appeals for the Second Circuit rejected Fourth and Fifth Amendment arguments against enforcement of the IRS summonses.195 The Second Circuit found that the reporting requirements of Section 6050I targeted transactions without regard to any underlying purpose.196 The court found that the information targeted by Form 8300 was not criminal on its face.197 Likewise, the Second Circuit held that the IRS summonses did not violate the Sixth Amendment.198 The court stated:

186. Gertner, 65 F.3d at 971.
187. Id. at 972-73.
188. Compare supra note 45 (holding that information sought on Form 8300 was protected by the attorney-client privilege) with notes 189-234 (holding that information sought on Form 8300 was not protected by the attorney-client privilege).
189. 935 F.2d 501 (2nd Cir. 1991).
192. Id. at 503; see 26 U.S.C. § 6050I (1988).
194. Id. at 503.
195. Id. at 503-04. In its discussion of the applicability of the Fourth and Fifth Amendments, the Second Circuit stated that the form in question did not require information that would necessarily reveal criminal activity. Id. at 503. The court found that the summonses did not present any constitutional problems. Id. at 504.
197. Goldberger & Dubin, P.C., 935 F.2d at 503.
198. Id.
The purpose of providing assistance of counsel "is simply to ensure that criminal defendants receive a fair trial[.]") . . . Thus, while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.\textsuperscript{199}

The Second Circuit also noted that Section 6050I does not rise to the level of the forfeiture statutes considered in \textit{Caplin & Drysdale, Chartered v. United States},\textsuperscript{200} and \textit{United States v. Monsanto}\textsuperscript{201} which, in spite of a Sixth Amendment challenge, precluded the defendants from using seized property to compensate their attorneys.\textsuperscript{202} The Second Circuit observed that "Section 6050-I [sic] does not preclude would-be clients from using their own funds to hire whomever they choose."\textsuperscript{203} Moreover, the court noted that "[n]one of the appellants has advanced a legitimate reason why payment other than in cash cannot be made."\textsuperscript{204} Thus, the Second Circuit held that Section 6050I survived constitutional challenges.\textsuperscript{205}

The Second Circuit also rejected the argument that Section 6050I conflicted with the attorney-client privilege.\textsuperscript{206} The court recognized that the doctrine only protects communications that would not be disclosed without the privilege and are necessary to provide informed legal advice.\textsuperscript{207} The Second Circuit held that "even where the technical requirements of the privilege are satisfied, it may, nonetheless, yield in a proper case, where strong public policy requires disclosure."\textsuperscript{208} The Second Circuit noted that, where the doctrine "collides head on" with a federal statute, as it implicitly does with Section 6050I, public policy requires disclosure.\textsuperscript{209}

In \textit{United States v. Ritchie},\textsuperscript{210} the United States Court of Appeals for the Sixth Circuit addressed constitutional challenges to Form

\begin{itemize}
  \item \textsuperscript{199} \textit{Id.} at 504 (quoting Wheat v. United States, 486 U.S. 153, 159 (1988)).
  \item \textsuperscript{200} 491 U.S. 617 (1989).
  \item \textsuperscript{201} 491 U.S. 600 (1989).
  \item \textsuperscript{202} \textit{Goldberger & Dubin, P.C.}, 935 F.2d at 504.
  \item \textsuperscript{203} \textit{Id.}
  \item \textsuperscript{204} \textit{Id.} The Second Circuit stated that "[t]o avoid disclosure . . . [clients] need only pay counsel in some manner other than with cash." \textit{Id.}
  \item \textsuperscript{205} \textit{Goldberger & Dubin, P.C.}, 935 F.2d at 504.
  \item \textsuperscript{206} \textit{Id.}
  \item \textsuperscript{207} \textit{Goldberger & Dubin, P.C.}, 935 F.2d at 504 (citing Fisher v. United States, 425 U.S. 391, 403 (1976); \textit{In re Horowitz}, 482 F.2d 72, 81-82 (2nd Cir. 1973), \textit{cert denied}, 414 U.S. 867 (1973)).
  \item \textsuperscript{208} \textit{Id.} at 505 (quoting Priest v. Hennessy, 409 N.E.2d 983, 986 (N.Y. 1980)).
  \item \textsuperscript{209} \textit{Id.} at 505.
  \item \textsuperscript{210} 15 F.3d 592 (6th Cir. 1994), \textit{cert. denied}, 115 S. Ct. 188 (1994).
\end{itemize}
In 1989, Tennessee attorney Robert W. Ritchie received cash payments in excess of $10,000. Ritchie filed a Form 8300 for each of the payments, but omitted information that would identify the payor or reveal the nature of the payments received. The IRS issued a summons requiring Ritchie to produce the omitted information, and Ritchie refused to comply. The United States District Court for the Eastern District of Tennessee ordered enforcement of the summons.

On appeal, the United States Court of Appeals for the Sixth Circuit reviewed the IRS summons procedures. The Sixth Circuit upheld enforcement of the summons even though the IRS had not followed the "letter of the law" in issuing the summons. The court then considered the substantive arguments against enforcement. The court rejected Ritchie's Sixth Amendment arguments for the same reasons given in Goldberger and Tornay. The court rejected the Fifth Amendment arguments against enforcement, finding that the client must be the person compelled in order to invoke the Fifth Amendment privilege against self-incrimination. The court also found that "the information required must be incriminating or integrally linked with behavior deemed offensive in order for the Fifth Amendment's protection to apply." 

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212. Ritchie, 15 F.3d at 595.
213. Id. Ritchie informed the IRS that the omitted information was privileged and that he was bound by the attorney-client privilege, the Fifth and Sixth Amendments, and the Tennessee Code of Professional Responsibility not to disclose the information. Id.
214. Ritchie, 15 F.3d at 595.
215. Id. at 592-96.
216. Id. at 592, 599-600. The Sixth Circuit engaged in a discussion regarding the treatment of the summons by the IRS. Id.
217. Ritchie, 15 F.3d at 600. The Sixth Circuit stated that the "spirit" of the law had been followed. Id. The court warned, however, that this decision did not suggest that the IRS could avoid the proper procedures in the future. Id.
218. Ritchie, 15 F.3d at 601-02. The Sixth Circuit stated that it would consider the "heart of Ritchie's objections" to enforcement of the summons. Id. at 601.
219. Ritchie, 15 F.3d at 601-02. The Sixth Circuit found that the Second and Ninth Circuits had rejected the same issues in United States v. Goldberger & Dubin, P.C., 935 F.2d 501, 503-04 (2d Cir. 1991) (finding that the purpose of the Sixth Amendment is to ensure effective counsel, not to ensure counsel of choice) and Tornay v. United States, 840 F.2d 1424, 1429-31 (9th Cir. 1988) (rejecting the Sixth Amendment arguments because payment could have been made in a form other than cash and the Sixth Amendment only granted a right to effective assistance of counsel).
220. Ritchie, 15 F.3d at 602.
Amendment to be implicated."221 The court stated that paying an attorney with cash simply does not meet these requirements.222

In United States v. Gertner,223 the United States District Court for the District of Massachusetts refused to enforce an IRS summons pursuant to Form 8300.224 Two attorneys, Nancy Gertner and Jody Newman, represented an individual charged in a narcotics case.225 The client made four cash payments totaling $82,260 from June 1991 to April 1992.226 At the time this case was heard, criminal charges were pending against the client.227 The attorneys reported the cash transactions to the IRS on Form 8300, but omitted information that would identify their client or reveal the nature of the transaction.228 The IRS issued a summons demanding that the attorneys appear and present information to complete the form.229 The district court then issued an order directing the attorneys to show cause why the summonses should be quashed.230

The court recognized that client identity and fee information are generally not protected by the attorney-client privilege and held that a bright line rule excepting attorneys from forced disclosure would not be appropriate.231 Under this set of facts, however, the court found that the omitted information was protected by the "legal advice exception."232 The court found that, because narcotics charges were pending against the client, there was a "strong probability" that disclosure of large, unexplained cash income could incriminate the client in the case for which he originally sought legal advice.233 The court further

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221. Id. (citations omitted).
222. Id. The Sixth Circuit did not consider Ritchie's arguments regarding the attorney-client privilege. Id. Ritchie abandoned his attorney-client privilege argument on appeal and did not make the due process argument at the district court level. Id.
225. Gertner, 873 F. Supp. at 731-32. The United States Court of Appeals for the First Circuit affirmed the decision based on the IRS' failure to follow "John Doe summons" procedures under Title 26 Court of the United States Code Section 7609. Gertner, 65 F.3d at 963-73. The First Circuit did not consider the attorney-client privilege issue. Id. at 973.
226. Gertner, 873 F. Supp. at 732. The client made four payments in the following amounts: $25,000, $25,000, $17,260, and $15,000. Id.
228. Id. The attorneys included a statement with each of the forms "explaining that the information requested violates the attorney client privilege, conflicts with the broader ethical obligation of an attorney[,] . . . and violates the First, Fifth and Sixth Amendment rights of attorneys and their clients." Id. (citation omitted).
230. Id. at 733.
231. Id. at 734-35.
232. Id. at 735.
233. Id.
analyzed the competing public policy concerns surrounding enforcement of the summonses and held that the balance weighed in favor of protecting the information from disclosure.234

**Decisions Regarding Statutes That Limit the Attorney-Client Relationship**

The United States Supreme Court has considered a statute that limits the attorney-client relationship in a similar context.235 Title 21 United States Code Section 853 ("Section 853") requires persons convicted of certain drug trafficking laws to forfeit assets that were derived from an illegal drug enterprise.236 Although Section 853 is silent with respect to forfeiture of funds necessary to pay attorneys' fees, the Supreme Court has held that attorneys' fees are within the scope of forfeitable assets under Section 853.237 Likewise, Section 853 has survived constitutional challenges that it violates due process and the right to counsel of choice.238

In *Caplin & Drysdale, Chartered v. United States*,239 the United States Supreme Court considered whether Section 853 could be applied to funds that would otherwise be used to compensate the defendant's attorney.240 Christopher Reckmeyer was charged with violating federal drug laws and hired Caplin & Drysdale, Chartered ("Caplin & Drysdale") to represent him in his defense.241 Pursuant to Section 853, Reckmeyer's indictment sought forfeiture of certain assets.242 Reckmeyer eventually entered into a plea agreement whereby he pled guilty and agreed to forfeit the assets specified in the indictment.243 The United States District Court for the Eastern District of Virginia ordered Reckmeyer to forfeit virtually all assets in his possession.244 Caplin & Drysdale filed a petition with the district court seeking an adjudication of its rights to assets necessary to pay $195,000 of

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234. *Id.* at 736-37. Because the district court decided the case based on the attorney-client privilege, it did not consider the constitutional arguments. *Id.* at 737.
235. *See infra* notes 239-76 and accompanying text.
236. 21 U.S.C. § 853(a) (1995). Section 853 provides in pertinent part:

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter . . . shall forfeit to the United States, . . .

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

*Id.*

237. *See infra* notes 272-74 and accompanying text.
238. *See infra* notes 239-76 and accompanying text.
242. *Id.* at 619-20.
243. *Id.* at 621.
Reckmeyer's accrued legal fees. Caplin & Drysdale argued that the forfeiture statute was unconstitutional regarding assets used to pay an attorney. Caplin & Drysdale argued that applying the forfeiture provision to assets that would otherwise be made to pay for legal counsel would violate the defendant's Sixth Amendment right to counsel of choice and the defendant's Fifth Amendment right to due process of law. The district court granted Caplin & Drysdale's claim.

A panel of the United States Court of Appeals for the Fourth Circuit affirmed the district court, but the panel's decision was reversed by the en banc court. Caplin & Drysdale appealed the decision to the United States Supreme Court.

The Supreme Court found that Section 853 did not violate a defendant's Sixth Amendment right to be represented by counsel of his choice. The Court recognized that the Sixth Amendment only guarantees a criminal defendant the right to adequate representation and that counsel of choice is only granted to defendants with the means to pay. The Court found that, under the forfeiture statute, title to the assets vested in the government at the time the crime was committed. The Court noted the government's legitimate interest in the forfeited property and found that a criminal defendant does not have a Sixth Amendment right to use government assets to pay his attorney merely because he has possession of those assets. The Court noted that there is no hierarchy among constitutional rights and that exercise of constitutional rights often depends upon a person's financial resources. The Court refused to recognize an antiforfeiture exception in order for a person to exercise his right to travel, practice religion, or speak even though not doing so might limit a person's ability to fully enjoy those rights. The Court stated that it likewise need not recognize an antiforfeiture exception in order for a person to fully exercise his Sixth Amendment rights.

245. Caplin & Drysdale, Chartered, 491 U.S. at 621.
246. Id. Another argument advanced was that applying Section 853 to attorney fees would create conflicts with states' rules and codes governing attorney conduct. Id. at 632-33 n.10. The Court stated that "[t]he fact that a federal statutory scheme . . . is at odds with model disciplinary rules or state disciplinary codes hardly renders the federal statute invalid." Id.
248. Id. at 621.
249. Id. at 622.
250. Id.
251. Id. at 625.
252. Id. at 624.
253. Id. at 627.
254. Id. at 631-32.
255. Id. at 628.
256. Id.
257. Id.
The Court also rejected Caplin & Drysdale's Fifth Amendment due process challenge that the forfeiture allowed the government to defeat the constitutional "balance of forces" between an accused and his accuser.\textsuperscript{258} The Court found that "while '[t]he Constitution guarantees a fair trial through the Due Process Clause . . . it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment,'" which the Court concluded had not been violated in this case.\textsuperscript{259}

The Court also considered application of Section 853 to assets that would otherwise be used to pay attorneys' fees in United States v. Monsanto.\textsuperscript{260} Monsanto was indicted on charges of directing a substantial heroin distribution enterprise.\textsuperscript{261} The indictment listed certain assets allegedly subject to forfeiture under Section 853 because the assets had been accumulated as a result of drug trafficking.\textsuperscript{262} The United States District Court for the Southern District of New York entered a restraining order freezing the assets in question awaiting trial.\textsuperscript{263} Monsanto moved the district court to vacate its restraining order so that he could use some of the frozen assets to hire an attorney.\textsuperscript{264} Monsanto argued that Section 853 did not apply to assets needed to pay attorneys' fees and that, even if it did, Section 853 was unenforceable as a violation of his Sixth Amendment right to retain counsel of his choice.\textsuperscript{265} The district court denied Monsanto's motion.\textsuperscript{266}

On appeal, the United States Court of Appeals for the Second Circuit did not accept Monsanto's arguments, but remanded the case for a

\textsuperscript{258} Id. at 633 (quoting Wardius v. Oregon, 412 U.S. 470, 474 (1973)).
\textsuperscript{259} Id. (quoting Strickland v. Washington, 466 U.S. 666, 684-85 (1984)). Justices Harry A. Blackmun, William J. Brennan, Thurgood Marshall, and John Paul Stevens dissented. Id. at 635. The dissenting justices stated that Section 853 did not mandate forfeiture of all assets. Id. at 638 (Blackmun, J., dissenting). The dissenting opinion contended that a district court may exempt assets that a defendant needs to pay his attorney for his trial. Id. at 641-42 (Blackmun, J., dissenting). Furthermore, the dissenting opinion noted that talented attorneys would not represent these defendants for fear that they would not be adequately compensated. Id. at 646 (Blackmun, J., dissenting). The dissent found that "attorney's-fee forfeiture substantially undermines every interest served by the Sixth Amendment right to chosen counsel," noting that "[h]ad it been Congress' express aim to undermine the adversary system[,] . . . it could hardly have found a better engine of destruction than attorney's-fee forfeiture." Id. at 648-51 (Blackmun, J., dissenting). The dissent stated that the government's fictitious property interest in the assets did not, on balance, override the defendant's right to counsel. Id. at 653 (Blackmun, J., dissenting).
\textsuperscript{260} 491 U.S. 600, 602-03 (1989).
\textsuperscript{261} United States v. Monsanto, 491 U.S. 600, 602 (1989).
\textsuperscript{262} Monsanto, 491 U.S. at 602.
\textsuperscript{263} Id. at 603-04; United States v. Monsanto, 836 F.2d 74, 75 (2nd Cir. 1987).
\textsuperscript{264} Monsanto, 491 U.S. at 604.
\textsuperscript{265} Id.
\textsuperscript{266} Id.
hearing "at which the government had the burden to demonstrate the likelihood that the assets are forfeitable."\textsuperscript{267} The Second Circuit held that any attorneys' fees paid would not be forfeitable, regardless of the outcome of the criminal trial, if the government did not adequately demonstrate that the assets were forfeitable at a preliminary hearing.\textsuperscript{268} The district court found that the government "overwhelmingly established a likelihood" of forfeiture and continued its restraining order.\textsuperscript{269} Meanwhile, the Second Circuit \textit{en banc} vacated its previous opinion and ordered the district court to modify its restraining order to allow the frozen assets to be used to pay Monsanto's attorneys' fees.\textsuperscript{270}

The United States Supreme Court granted certiorari.\textsuperscript{271} The Supreme Court interpreted Section 853 and found that it did not exempt assets that were used for the payment of attorneys' fees.\textsuperscript{272} The Court rejected Monsanto's argument that, because Section 853 did not expressly mention payment of attorneys' fees, assets used as such were exempt from the forfeiture provision.\textsuperscript{273} The Court noted that the forfeiture provision was written broadly and that "Congress' failure to supplement [Section] 853(a)'s comprehensive phrase — 'any property' — with an exclamatory 'and we even mean assets to be used to pay an attorney'" did not weaken the force of the provision's language.\textsuperscript{274}

Relying upon \textit{Caplin \\& Drysdale, Chartered v. United States}, the Court also rejected Monsanto's arguments that the restraining order violated his Sixth Amendment right to counsel of choice or his Fifth Amendment right to due process.\textsuperscript{275} The Court further found that freezing a defendant's assets before conviction did not violate the Constitution if the government could show probable cause that the assets would be forfeitable.\textsuperscript{276}

\textsuperscript{267} \textit{Id.} at 605 (citations omitted).
\textsuperscript{268} \textit{Id.}
\textsuperscript{269} \textit{Id.} (citations omitted).
\textsuperscript{270} \textit{Id.}
\textsuperscript{271} \textit{Id.} at 606.
\textsuperscript{272} \textit{Id.}
\textsuperscript{273} \textit{Id.} at 608-11.
\textsuperscript{274} \textit{Id.} at 609.
\textsuperscript{275} \textit{Id.} at 614.
\textsuperscript{276} \textit{Id.} at 615-16. The dissent presented in \textit{Caplin \\& Drysdale, Chartered v. United States}, 491 U.S. 617 (1989), also applied to this case. \textit{Caplin \\& Drysdale}, 491 U.S. at 635.
ANALYSIS

In United States v. Sindel, the United States Court of Appeals for the Eighth Circuit considered constitutional and evidentiary defenses to completion of Form 8300. With regard to the attorney-client privilege, the Eighth Circuit applied the "confidential communications exception" to the general rule that client identity and fee information are not protected. The Eighth Circuit found that the First, Fifth, and Sixth Amendments of the United States Constitution did not prevent attorneys from supplying information on Form 8300. Nevertheless, the court disregarded Congress' intent in Title 26 United States Code Section 60501 ("Section 60501") and became the first federal appellate court to hold that the attorney-client privilege could prevent disclosure of certain information on Form 8300.

The Eighth Circuit correctly analyzed the constitutional issues and held that neither the First Amendment, Fifth Amendment, nor the Sixth Amendment provided Sindel with a defense to completion of Form 8300. The Eighth Circuit also correctly held that the Missouri rule of lawyer-client confidentiality does not trump the reporting requirements of Section 60501.

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277. 53 F.3d 874 (8th Cir. 1995).
278. See supra notes 43-57 and accompanying text.
279. United States v. Sindel, 53 F.3d 874, 876 (8th Cir. 1995).
280. See supra notes 49-57 and accompanying text; Sindel, 53 F.3d at 877-78.
281. Compare Sindel, 53 F.3d at 875-76 (holding that the attorney-client privilege protected information sought on Form 8300) with supra notes 189-234 (stating that the attorney-client privilege did not protect information sought on Form 8300); Compare supra notes 58-68 and accompanying text (discussing the data required on Form 8300 and Congress' refusal to create an exemption to the reporting requirements for attorneys) with Sindel, 53 F.3d at 875-76 (holding that attorney-client privilege retains the identity of Jane Doe). Title 26 of the United States Code Section 60501 provides in relevant part:

(a) Cash receipts of more than $10,000. — Any person —
(1) who is engaged in a trade or business, and
(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions), shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns. — A return is described in this subsection if such return —
(1) is in such form as the Secretary may prescribe,
(2) contains—
(A) the name, address, and TIN [Taxpayer Identification Number] of the person from whom the cash was received,
(B) the amount of the cash received,
(C) the date and nature of the transaction, and
(D) such other information as the Secretary may prescribe.

282. See supra note 6 and accompanying text; See infra notes 289-315 and accompanying text.
283. See infra notes 316-20 and accompanying text.
rect interpretation of the Baird exception, the "confidential communications exception," and determined that forcing Sindel to comply with the requirements of Form 8300 would violate the attorney-client privilege with respect to his client, Jane Doe.\footnote{284} However, the Eighth Circuit failed to consider whether Section 6050I abrogated the common law attorney-client privilege and therefore mistakenly concluded that the attorney-client privilege could be asserted in a Form 8300 case.\footnote{285}

Finally, the Eighth Circuit ignored the negative public policy implications of its decision in Sindel by declaring that the attorney-client privilege can protect information from disclosure on Form 8300.\footnote{286} Although the holding in Sindel respects an attorney-client privilege, it provides no precedence that can be applied in future analysis of attorney-client privilege issues.\footnote{287} The Eighth Circuit's decision in Sindel has the practical effect of encouraging litigation because an in-camera proceeding is the only way to determine if the attorney-client privilege protects the information requested on Form 8300.\footnote{288}

**Sixth Amendment Right to Counsel**

The United States Court of Appeals for the Eighth Circuit rejected Sindel's arguments that compliance with Section 6050I would violate his clients' Sixth Amendment right to counsel.\footnote{289} The Eighth Circuit was correct in doing so for three reasons.\footnote{290} First, the right to counsel guaranteed by the Sixth Amendment does not "attach" until after commencement of adversary proceedings.\footnote{291} An individual's Sixth Amendment rights are not violated by the possibility that his lawyer could be disqualified in a future proceeding.\footnote{292} In Sindel, the IRS issued a summons requesting production of the information missing on Form 8300.\footnote{293} The IRS did not bring an action against either of the clients, and an adversarial proceeding had not yet been com-

\footnote{284}{See infra notes 44, 340-44 and accompanying text.}
\footnote{285}{Compare Sindel, 53 F.3d at 876-78 (holding that the attorney-client privilege protected information sought on Form 8300) with infra notes 360-76 and accompanying text (discussing Congress' intentional abrogation of the attorney-client privilege with respect to the currency reporting requirements of § 6050I).}
\footnote{286}{See infra notes 387-92 and accompanying text.}
\footnote{287}{See infra notes 387-92 and accompanying text.}
\footnote{288}{See infra notes 387-92 and accompanying text.}
\footnote{289}{Sindel, 53 F.3d at 875-77; see supra notes 41 and 50 and accompanying text.}
\footnote{290}{See infra notes 291-307 and accompanying text.}
\footnote{291}{Tornay v. United States, 840 F.2d 1424, 1429 (9th Cir. 1988) (citations omitted). In Tornay, the Ninth Circuit concluded that, because no adversarial proceeding had commenced, the clients' Sixth Amendment rights had not been violated. Tornay, 840 F.2d at 1429.}
\footnote{292}{Tornay, 840 F.2d at 1429-30.}
\footnote{293}{Sindel, 53 F.3d at 876.
menced. Therefore, Sindel's clients' Sixth Amendment rights were not violated because those rights had not yet "attached."

Second, as the Eighth Circuit pointed out in Sindel, the reporting requirements of Section 6050I do not prevent a potential client from retaining counsel. Sindel's clients chose to pay him in cash. Because lawyers are only required to report cash transactions in excess of $10,000, the clients need only pay in some other manner to avoid the disclosure. As the United States Court of Appeals for the Second Circuit pointed out in United States v. Goldberger & Dubin, P.C., "Statements such as 'some clients may not have non-cash assets' are somewhat less than persuasive" because it is easy to exchange cash for a monetary instrument such as a cashier's check. A client can easily pay his attorney in another manner without creating interest by the government. Moreover, the Constitution does not provide a "protected liberty interest in spending large amounts of cash without having to account for it."

Third, as the United States Supreme Court stated in Caplin & Drysdale, Chartered v. United States, "[T]here is no . . . hierarchy among constitutional rights." Certainly, one would not expect to avoid the reporting requirements of Section 6050I when paying more than $10,000 in cash to exercise one's constitutional right to travel or practice religion. Likewise, one should not be able to avoid the reporting requirements when exercising one's constitutional right to counsel of choice. The right to counsel of choice is no more constitutionally sacred than the right to travel or practice religion.

294. Id.; see supra note 23 and accompanying text (stating that the IRS served Sindel with a summons); see also supra note 25 and accompanying text (stating that an enforcement action was brought after Sindel failed to comply with the summons).
295. See supra notes 292-94 and accompanying text.
296. Sindel, 55 F.3d at 877.
297. Id. at 875.
298. See 26 U.S.C. § 6050I (1988) (requiring attorneys to report cash transactions in excess of $10,000); see supra note 204 and accompanying text.
299. 935 F.2d 501 (2nd Cir. 1991).
302. United States v. Ritchie, 15 F.3d 592, 601 (6th Cir. 1994) (stating that "we have searched in vain to find support for the proposition that there is a constitutionally protected liberty interest in spending large amounts of cash without having to account for it").
305. Compare supra notes 62-64 and accompanying text (prescribing the reporting requirements of Section 6050I) with Caplin & Drysdale, Chartered, 491 U.S. at 628 (stating that there is no hierarchy among constitutional rights).
306. Id.
307. Id.
FIFTH AMENDMENT PROTECTION AGAINST SELF-INCRIMINATION

The United States Court of Appeals for the Eighth Circuit also rejected Sindel's claim that completion of Form 8300 would violate his clients' Fifth Amendment protection against self-incrimination.\textsuperscript{308} The Eighth Circuit reasoned that the protection only applies to compelled testimony by the individual holding the privilege and not to other means, such as information obtainable from the individual's attorney.\textsuperscript{309} The court's analysis was in line with the United States Supreme Court's reasoning on the same issue in \textit{Fisher v. United States}.\textsuperscript{310} In \textit{Fisher}, the Supreme Court held that a lawyer could not claim the Fifth Amendment privilege on behalf of his client to quash a subpoena to produce the client's tax documents.\textsuperscript{311} The Court recognized that a valid self-incrimination claim must be raised by an accused person compelled to testify against himself.\textsuperscript{312} In both \textit{Fisher} and \textit{Sindel}, the clients were not compelled to testify or produce evidence.\textsuperscript{313} Only their lawyers were being compelled.\textsuperscript{314} Therefore, because Sindel's clients are not being forced to testify against themselves, no valid self-incrimination claim exists.\textsuperscript{315}

RULES OF PROFESSIONAL CONDUCT

The Eighth Circuit also rejected Sindel's argument that the Rules of Professional Conduct prevented him from complying with the requirements of Section 6050I even though the Missouri rule of confidentiality does not provide an exception for complying with the law.\textsuperscript{316} The Eighth Circuit reasoned that "Congress cannot have intended to allow local rules of professional ethics to carve out fifty different privileged exemptions to the reporting requirements" of Section 6050I.\textsuperscript{317} Based on the United States Supreme Court ruling in \textit{Caplin & Drysdale, Chartered v. United States},\textsuperscript{318} which concluded that "[t]he fact

\textsuperscript{308} Sindel, 53 F.3d at 877; see supra notes 53-54 and accompanying text.
\textsuperscript{309} Sindel, 53 F.3d at 877.
\textsuperscript{310} 425 U.S. 391 (1976); compare supra notes 53-54 and accompanying text (finding that the Fifth Amendment was not implicated because the incriminating evidence was requested from the attorney and not the client) with supra notes 109-14 and accompanying text (finding that the Fifth Amendment was not implicated because the incriminating evidence was requested from the attorney and not the client).
\textsuperscript{312} Fisher, 425 U.S. at 397.
\textsuperscript{313} See supra notes 23, 100 and accompanying text (stating that in both cases the IRS served the attorney and not the clients with a summons).
\textsuperscript{314} Id.
\textsuperscript{315} See Fisher, 425 U.S. at 397 (stating that the client must be compelled to testify in order for a valid self-incrimination claim to exist).
\textsuperscript{316} Sindel, 53 F.3d at 877; see supra notes 48, 79 and accompanying text.
\textsuperscript{317} Sindel, 53 F.3d at 877; see supra note 48 and accompanying text.
\textsuperscript{318} 491 U.S. 617 (1989).
that a federal statutory scheme . . . is at odds with model disciplinary rules or state disciplinary codes hardly renders the federal statute invalid[,]" the Eighth Circuit's ruling was correct. Therefore, the mere fact that Section 6050I causes a conflict with the Missouri rule of lawyer-client confidentiality does not invalidate Section 6050I.320

ATTORNEY-CLIENT PRIVILEGE

In Sindel, the Eight Circuit concluded that the attorney-client privilege protects the true identity of attorney Richard Sindel's client Jane Doe. However, the court ordered that the attorney-client privilege did not protect the identity of Sindel's other client, John Doe. To reach these conclusions, the court considered the "special circumstances" exceptions originated in Baird v. Koerner.

Analysis of the Baird Exceptions

In Baird, the United States Court of Appeals for the Ninth Circuit concluded that the attorney-client privilege protected attorney Alva Baird's clients' identities because revelation would effectively divulge the clients' secret of not paying sufficient income tax. In Baird, the Ninth Circuit relied on a California privilege statute that is broader than the federal common law of attorney-client privilege articulated in Fisher v. United States. Under the California law applied in Baird, the client's identity was privileged if "[identity] is material only for the purpose of showing an acknowledgment of guilt . . . of the very offense [for which] the attorney was employed." Indeed, the facts in Baird fit well into this rule because the clients had already acknowledged guilt by paying the overdue taxes, and the government's only interest in their identities, now that the taxes were paid, was to assign that guilt.327

319. Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 632-33 n.10 (1989); Compare supra note 48 and accompanying text (stating that "Congress cannot have intended to allow local rules of professional ethics to carve out fifty different privileged exemptions") with supra note 233 and accompanying text (stating that "[t]he fact that a federal statutory scheme . . . is at odds with model disciplinary rules or state disciplinary codes hardly renders the federal statute invalid").
320. Id.
321. Sindel, 53 F.3d at 876-78.
322. Id. at 877-78.
323. 279 F.2d 623 (9th Cir. 1960); Sindel, 53 F.3d at 877-78. See McBride, 23 CRIM. L. BULL. at 240.
324. See supra notes 136-49 and accompanying text; see also Baird v. Koerner, 279 F.2d 623, 633 (9th Cir. 1960).
326. Baird, 279 F.2d at 633 (citation omitted).
327. See supra notes 136-49 and accompanying text; Baird, 279 F.2d at 633.
Since the decision in *Baird*, Congress has enacted Federal Rule of Evidence 501 ("Rule 501") which dictates that federal common law governs the rules of privileged testimony.\(^{328}\) Because of Rule 501, the decision in *Baird* is valid precedent only to the extent that the "exceptions" derived from it conform to the federal common law of attorney-client privilege.\(^{329}\)

Federal courts have developed three interpretations of the *Baird* exception: the "legal advice exception," the "last-link exception," and the "confidential communications exception."\(^{330}\) The first two interpretations protect any information that could incriminate the client.\(^{331}\) The third interpretation disregards the incriminating nature of the information and focuses on whether the information was obtained through a communication between a client and his attorney.\(^{332}\)

The incrimination based interpretations broadly protect information that the client might not have revealed to the attorney.\(^{333}\) For example, a third party could provide an attorney with incriminating information regarding the attorney's client.\(^{334}\) Under the "legal advice exception" and "last-link exception," the attorney-client privilege would protect this information because the information would incriminate the client.\(^{335}\) The limited purpose analysis in *Fisher* would not protect this information, however, because it was not derived from a communication with the client.\(^{336}\) The United States Supreme Court in *Fisher* defined the purpose of the attorney-client privilege as encouraging "clients to make full disclosure to their attorneys."\(^{337}\) The Supreme Court limited the application of the privilege to achieve this purpose.\(^{338}\) Therefore, it follows that the privilege only protects disclosures made to the attorney by the client.\(^{339}\)


\(^{329}\) Compare *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d 1485, 1488-92 (10th Cir. 1990) (interpreting the exceptions in *Baird* with Fed. R. Evid. 501 (stating that privileges are "governed by the principles of common law").

\(^{330}\) See supra note 150 and accompanying text.

\(^{331}\) See supra notes 151-53 and accompanying text.

\(^{332}\) See McBride, 23 CRIM. L. BULL. at 242-43; *In re Grand Jury Subpoena (Osterhoudt)*, 722 F.2d 591, 594 (9th Cir. 1983).

\(^{333}\) McBride, 23 CRIM. L. BULL. at 243. See *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d 1485, 1488-89 (10th Cir. 1990) (defining the scope of the "legal advice exception" and the "last-link exception"); see supra notes 151-53 and accompanying text.

\(^{334}\) McBride, 23 CRIM. L. BULL. at 243.

\(^{335}\) See supra notes 151, 153 and accompanying text.

\(^{336}\) See *Fisher*, 425 U.S. at 403. The Court in *Fisher* limited the protection of the attorney-client privilege to only protect communications "necessary to obtain informed legal advice." *Id.*

\(^{337}\) *Fisher*, 425 U.S. at 403.

\(^{338}\) *Id.*

\(^{339}\) See id. at 403.
The confidential communications exception, on the other hand, supports the purpose of the attorney-client privilege outlined in Fisher.\textsuperscript{340} The confidential communications exception protects information that would, if disclosed, effectively reveal the substance of an otherwise protected communication between the attorney and client.\textsuperscript{341} It is irrelevant whether the information sought to be protected is incriminating.\textsuperscript{342} If a client knows that his attorney might be required to reveal confidential information, the client may hesitate to confide in his lawyer and uninformed legal advice could thereby result.\textsuperscript{343} If a client is discouraged from revealing important information to his attorney, the purpose of the privilege, "to encourage clients to make full disclosure to their attorneys," is impaired.\textsuperscript{344}

Application of the Confidential Communications Exception to Form 8300 Cases

While federal courts recognize the confidential communications exception, the majority apply the exception narrowly to protect only information regarding the matter for which the client sought legal advice.\textsuperscript{345} In order for the confidential communications exception to apply, the revelation must be tantamount to revealing a confidential, professional communication.\textsuperscript{346} In fact, the United States Court of Appeals for the Tenth Circuit held that the circumstances must almost mirror Baird in order for the exception to apply.\textsuperscript{347}

On its face, Form 8300 does not require information that would reveal the substance of a confidential communication.\textsuperscript{348} The Ninth Circuit's decision in Baird is the result of an unusual set of facts.\textsuperscript{349} The attorney's letter in Baird revealed the substance of the clients' communication by acknowledging that his clients had underpaid their federal income tax.\textsuperscript{350} In this situation, providing the clients' names

\textsuperscript{340} Compare supra note 156 and accompanying text (defining the "confidential communications exception") with Fisher, 425 U.S. at 403 (outlining the scope of the attorney-client privilege).

\textsuperscript{341} Anderson, 906 F.2d at 1491; see supra note 156 and accompanying text.

\textsuperscript{342} See McBride, 23 CTHM. L. BULL. at 242-43.

\textsuperscript{343} Fisher, 425 U.S. at 403.

\textsuperscript{344} Id.


\textsuperscript{346} Anderson, 906 F.2d at 1492; see supra note 155 and accompanying text (stating that the "confidential communications exception" is a more disciplined interpretation of Baird); see also Tornay v. United States, 840 F.2d 1424, 1428 (9th Cir. 1988) (stating that the interpretation of Baird applies if disclosure is tantamount to disclosure of a confidential communication).

\textsuperscript{347} Anderson, 906 F.2d at 1492; see supra note 157 and accompanying text.

\textsuperscript{348} See appendix to examine Form 8300.

\textsuperscript{349} See Anderson, 906 F.2d at 1492 (stating that the Baird case was comprised of rare circumstances).

\textsuperscript{350} Baird, 279 F.2d at 626.
would effectively reveal what the Internal Revenue Service ("IRS") needed to know. However, Form 8300 reveals only the payor's identity and the amount of the cash payment. Unlike the lawyer's letter to the IRS in Baird, the information withheld by Sindel would patently reveal nothing about the substance of a client communication.

Although on its face Form 8300 appears to reveal only non-privileged information, Form 8300 could effectively reveal privileged information. If the client had initially given the attorney incorrect information, such as an incorrect Social Security Number, and later discussed this matter with the attorney, the attorney would be required to report the correct Social Security Number on subsequent forms. The lawyer could not complete Form 8300 without revealing the correct Social Security Number. This divulgence may also reveal information that the client had communicated to the attorney in confidence. The client would be discouraged from making full disclosure to his attorney because doing so would ultimately reveal his secret on Form 8300 — that the client had misused a Social Security Number. Assuming that the client would not have made this disclosure to his attorney if he did not believe it was protected by the attorney-client privilege, it would be a protected communication if the client disclosed this matter for the purpose of obtaining legal advice.

STATUTORY ABROGATION OF ATTORNEY-CLIENT PRIVILEGE

In Sindel, the Eighth Circuit found that Form 8300 can effectively reveal an otherwise privileged communication. However, courts should not apply the attorney-client privilege in a Form 8300 case because Congress has abrogated the privilege by enacting Section

351. Id. at 633.
352. See supra notes 71-75 and accompanying text; see appendix to examine Form 8300.
353. Compare Baird, 279 F.2d at 626 (describing Baird's letter to the IRS) with supra notes 16-18 and accompanying text (listing the information Sindel omitted) and supra note 134 and accompanying text (stating that client identity and fee information are not generally protected communications).
354. See appendix to examine Form 8300; see also Joint Reply Brief of Appellants at 19-20, United States v. Sindel, 53 F.3d 874 (8th Cir. 1995) (Nos. 94-2683, 94-2684).
355. See Reply Brief at 19, Sindel (Nos. 94-2683, 94-2684).
356. Id.; see appendix to examine Form 8300.
357. See supra note 71 and accompanying text; see appendix to examine Form 8300.
358. See supra notes 106-08 and accompanying text.
359. See Fisher, 425 U.S. at 403.
360. Sindel, 53 F.3d at 876.
In United States v. Goldberger & Dubin P.C., the United States Court of Appeals for the Second Circuit recognized that special circumstances could exist that would place information required on Form 8300 within the protection of the attorney-client privilege. In Goldberger, the Second Circuit further recognized, however, that Congress' intentions mandate abrogation of the privilege in Form 8300 cases. As the court observed, "[E]ven where the technical requirements of the privilege are satisfied, it may, nonetheless, yield . . . where strong public policy requires disclosure." Because Congress rejected the public policy arguments in favor of allowing the information to be protected by the attorney-client privilege, the court in Goldberger concluded that the privilege must yield to Congress' findings. Although Congress may not have considered the implications of the attorney-client relationship when it first enacted Section 6050I, Congress did consider those implications when the legal community lobbied for an exception to the reporting requirements. Despite lobbying efforts, Congress did not see fit to make an exception to Section 6050I for attorneys. Therefore, Congress intentionally ab-

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362. 935 F.2d 501 (2nd Cir. 1991).
363. Goldberger, 935 F.2d at 505 (stating that "absent special circumstances . . . the identification in Form 8300 . . . is not a disclosure of a privileged communication").
364. Id. at 506.
365. Id. (quoting Priest v. Hennessy, 409 N.E.2d 983, 986 (N.Y. 1980)).
366. Id.
367. See Podgor, 5 GEO. J. LEGAL ETHICS at 491-92, n.42; McBride, 23 CRIM. L. BULL. at 222-23.

Examination of books and witnesses

(a) Authority to summon, etc. — For the purpose of ascertaining the correctness of any return, making a return where none has been made, . . . the Secretary is authorized—

1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

2) To summon . . . any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry;

Id. Section 7602 clearly defines the IRS' power to summon information, but like Section 6050I, it is silent on the issue of attorney-client privilege. McBride, 23 CRIM. L. BULL. at 228; see 26 U.S.C. § 6050I (1988) (remaining silent on the issue of attorney-client privilege). In United States v. Euge, 444 U.S. 707 (1980), the United States Supreme Court interpreted Section 7602 to be "subject to the traditional privileges and limitations." Euge, 444 U.S. at 714. This interpretation implies that traditional privileges, such as
rogated the common law right of attorney-client privilege with respect to the information required by Form 8300.369

In United States v. Monsanto,370 the United States Supreme Court considered whether a federal statute requiring forfeiture of illegally obtained assets applied to funds used to pay defense counsel.371 The statute in question was Title 21 United States Code Section 853 ("Section 853"), which, like Section 6050I, is silent with respect to its effect on the attorney-client relationship.372 Congress has refused to exempt attorneys from the forfeiture required under Section 853.373 The Supreme Court has held that Section 853 applies to funds paid to defense attorneys despite the statute's silence.374 The Supreme Court stated that the statute need not specifically address the attorney-client relationship in order for attorneys to be included.375 Likewise, attorneys are included under the provisions of Section 6050I even

the attorney-client privilege, are fundamental, and that they limit statutory language even without express reservation. McBride, 23 CRim. L. BULL. at 229. However, Section 6050I is more narrowly focused than the summons powers of Section 7602. Id. at 230. Section 7602 does not specify particular information sought by the IRS. See 26 U.S.C. § 7602 (1988) (failing to specify particular information sought by the IRS). In enacting Section 6050I, Congress specified the exact information required to be disclosed. See 26 U.S.C. § 6050I(B)(2) (1988) (specifying the information to be disclosed). Congress has specifically considered the impact of Section 6050I on the attorney-client privilege, and has refused to create an exemption for attorneys. Podgor, 5 GEO. J. LEGAL ETHICS at 491-92 n.42; see McBride, 23 CRIM. L. BULL. at 222-23. Also, unlike the broad summons power under Section 7602, Section 6050I is only implicated when the client voluntarily chooses to pay with cash. McBride, 23 CRIM. L. BULL. at 230.

369. See supra note 368.
372. Compare 21 U.S.C. § 853 (1995) (failing to address the statute's effect on the attorney-client relationship) with supra note 60 and accompanying text (noting § 6050I's failure to address the statute's effect on the attorney-client relationship). Title 21 of the United States Code Section 853 provides in pertinent part:

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter . . . shall forfeit to the United States, . . .

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;


373. See 21 U.S.C. § 853 (failing to exempt attorneys from the forfeiture required under the statute); see also Monsanto, 491 U.S. at 608 (stating that "Congress simply did not consider the prospect that forfeiture would reach assets that could be used to pay for an attorney"). Although Congress did not directly debate the attorney exception from Section 853, Congress did consider situations in which attorneys' fees were not forfeited and found those situations unacceptable. See S. Rep. No. 98-225, 98th Cong. 2nd Sess. (1984) reprinted in 1984 U.S.S.C.A.N. 3182, 3376-93 (failing to explicitly debate the exception for attorneys); Monsanto, 491 U.S. at 608 n.8.

374. Monsanto, 491 U.S. at 611-16.

375. Caplin & Drysdale, Chartered, 491 U.S. at 633; see supra note 259 and accompanying text.
though Section 6050I does not specifically address the attorney-client relationship.\textsuperscript{376}

\textbf{Attorney-Client Privilege Applied to “Suspicious Transaction” Box}

For justiciability reasons, the Eighth Circuit did not decide the issue of the “suspicious transaction” box on the 1990 version of Form 8300.\textsuperscript{377} The court did recognize, however, that serious Sixth Amendment implications exist by requiring the attorney to become a “defacto agent” for the government in these circumstances.\textsuperscript{378}

The United States Supreme Court considered an issue similar to the “suspicious transaction” disclosure in \textit{Upjohn Company v. United States},\textsuperscript{379} however, and recognized a restriction in providing privileged information.\textsuperscript{380} In \textit{Upjohn}, the Supreme Court recognized the importance of the attorney’s work product, stating that “the court shall protect against disclosure of the [attorney’s] mental impressions, conclusions, [or] opinions.”\textsuperscript{381} Although the work-product doctrine protects only materials prepared by the attorney, its purpose is to prevent opposing counsel from having the advantage of obtaining the lawyer’s legal opinion regarding his client’s case.\textsuperscript{382} Similarly, the “suspicious transaction” box on Form 8300 requires the attorney to consider the circumstances revealed to him by the client and disclose his mental impression of the cash transaction.\textsuperscript{383} Unlike any other trade or business, application of the “suspicious transaction” box to attorneys requires them to reveal an informed legal opinion.\textsuperscript{384} When the legal community lobbied with regard to Section 6050I in 1985, Congress did not specifically consider the impact of the attorney-client privilege on the “suspicious transaction” box because the box was not

\textsuperscript{376} \textit{Id.}
\textsuperscript{377} \textit{Sindel}, 53 F.3d at 877.
\textsuperscript{378} \textit{Id.}
\textsuperscript{379} 449 U.S. 383 (1981).
\textsuperscript{381} \textit{Upjohn}, 449 U.S. at 400. \textit{See Fed. R. Civ. P.} 26. Rule 26 provides in pertinent part: 

\begin{quote}
[A] party may obtain discovery of documents and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent)[.]. . . In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.
\end{quote}

\textsuperscript{383} \textit{See supra} notes 74-75 and accompanying text (describing the “suspicious transaction” box); \textit{see also supra} note 381 and accompanying text (stating that the court should protect against asking for an attorney’s mental impression).
\textsuperscript{384} \textit{Id.}
on Form 8300 at that time.\footnote{385} Therefore, forcing an attorney to provide his "mental impression" of the client's situation as a "suspicious transaction" may be a violation of the attorney-client privilege because Congress has not specifically abrogated the privilege with respect to the "suspicious transaction" box.\footnote{386}

**Future Implications of Sindel**

Although the Eighth Circuit's decision in *Sindel* creates a defense to completion of Form 8300 for attorneys, the decision provides virtually no precedential value.\footnote{387} Because the circumstances surrounding the transaction between Sindel and Jane Doe were presented to the court in-camera and are not included in the opinion, those facts cannot be compared with future situations to determine if a confidential communication would be revealed by completing Form 8300.\footnote{388} In order to preserve the privileged information, the facts which justify application of the privilege must remain sealed.\footnote{389} However, without access to those facts, lawyers can only speculate as to what circumstances are sufficient to be tantamount to revealing a confidential communication.\footnote{390} Therefore, the Eighth Circuit's *Sindel* holding has the negative public policy effect of creating an uncertain privilege for which only litigation can resolve.\footnote{391}

**Conclusion**

In *United States v. Sindel*,\footnote{392} the United States Court of Appeals for the Eighth Circuit became the only appellate court to find that information required on Form 8300 may be protected by the attorney-client privilege.\footnote{393} The court purports to have found the unique circumstances necessary to find that revealing the client's identity would also effectively reveal a confidential communication.\footnote{394} The court also decided, however, that the United States Constitution does not prevent disclosure.\footnote{395}

\footnotetext{385}{See supra notes 65-67 and accompanying text; see also note 21 and accompanying text.}
\footnotetext{386}{See supra notes 377-85 and accompanying text.}
\footnotetext{387}{See infra notes 388-91 and accompanying text.}
\footnotetext{388}{*Sindel*, 53 F.3d at 876-78; see supra notes 44-45 and accompanying text.}
\footnotetext{389}{*Sindel*, 53 F.3d at 876; see supra notes 28-29 and accompanying text.}
\footnotetext{390}{See supra notes 44-45 and accompanying text.}
\footnotetext{391}{See supra notes 387-90 and accompanying text.}
\footnotetext{392}{53 F.3d 874 (8th Cir. 1995).}
\footnotetext{393}{*United States v. Sindel*, 53 F.3d 874, 876 (8th Cir. 1995); see supra notes 44-45, 189-234 and accompanying text.}
\footnotetext{394}{*Sindel*, 53 F.3d at 876; see supra note 44-45 and accompanying text.}
\footnotetext{395}{See supra notes 49-57 and accompanying text.}
The Eighth Circuit correctly analyzed the attorney-client privilege issue by relying on the confidential communications exception to the general rule that client identity and fee information are not protected.\textsuperscript{396} The court failed, however, in not recognizing that the common law privilege was abrogated by Congress.\textsuperscript{397} The attorney-client privilege is a common law concept based on public policy considerations.\textsuperscript{398} Congress considered the effect that Section 6050I would have on the attorney-client privilege and balanced public policy considerations in favor of disclosure.\textsuperscript{399} In enacting Section 6050I, Congress exercised its authority to rescind the common law.\textsuperscript{400} Whether Congress created wise public policy by refusing to exempt attorneys from the reporting requirements of Section 6050I may be questionable. Good public policy or not, unless Section 6050I is unconstitutional, the judiciary should not second guess Congress' judgment.

Even though the Eighth Circuit appears to carve out a narrow exception for attorneys in filing Form 8300, the privilege is of no practical value as a precedent. The Sindel decision invites litigation, but does not provide instruction for application in future cases. Because the circumstances which made Jane Doe's information privileged were heard in-camera and remain sealed, lawyers, clients, and judges cannot be certain when the privilege applies. Indeed, "[a]n uncertain privilege . . . is little better than no privilege at all."\textsuperscript{401}

\textit{Ronald K. Vaske—'97}

\textsuperscript{396} See supra notes 330-44 and accompanying text.
\textsuperscript{397} See supra notes 360-76 and accompanying text.
\textsuperscript{398} McBride, 23 CUM. L. BULL. at 231.
\textsuperscript{399} See supra notes 67-68 and accompanying text.
\textsuperscript{400} See supra notes 58-68 and accompanying text.
\textsuperscript{401} Upjohn Co. v. United States, 449 U.S. 383, 393 (1981).
### Form 8300

**Report of Cash Payments Over $10,000 Received in a Trade or Business**

1. **Identity of Individual Conducting the Transaction**
   - **Last name:**
   - **First name:**
   - **M.L.:**
   - **Social security number:**
   - **Number and street:**
   - **Passport number:**
   - **Country:**
   - **Cash registration number:**
   - **Country:**
   - **City:**
   - **State:**
   - **ZIP code:**
   - **Country (if not U.S.):**
   - **Other identifying data (Specify):**

2. **Individual or Organization for Whom This Transaction Was Completed**
   - **Individual's last name:**
   - **First name:**
   - **M.L.:**
   - **Social security number:**
   - **Name of organization:**
   - **Employer identification number:**
   - **Passport number:**
   - **Country:**
   - **Number and street:**
   - **Business or occupation:**
   - **Cash registration number:**
   - **Country:**
   - **City:**
   - **State:**
   - **ZIP code:**
   - **Country (if not U.S.):**
   - **Other identifying data (Specify):**

3. **Description of Transaction and Method of Payment**
   - **Amount of cash received:** $____
   - **Amount in item 1 in $100 bills:** $____
   - **Nature of transaction:**
     - [ ] 1. Personal property purchased
     - [ ] 2. Real property purchased
     - [ ] 3. Personal services provided
     - [ ] 4. Business services provided
     - [ ] 5. Intangible property purchased
     - [ ] 6. Debt obligation paid
     - [ ] 7. Exchange of cash
     - [ ] 8. Escrow or trust funds
     - [ ] 9. Other (specify)

4. **Method of payment by customer:**
   - [ ] Paid with U.S. currency or coin
   - [ ] Paid with foreign currency (describe)

5. **Date paid:**

6. **Business Reporting This Transaction**
   - **Name of reporting business:**
   - **Identification number (EIN or SSN):**
   - **Street address:**
   - **City:**
   - **State:**
   - **ZIP code:**
   - **Nature of your business:**

   **Sign Here**
   - **(Authorized Signature—See Instructions):**
   - **(Title):**
   - **(Date):**

For Paperwork Reduction Act Notice, see page 2.
General Instructions

Paperwork Reduction Act Notice. — We ask this information to carry out the Internal Revenue laws of the United States. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

The time needed to complete this form, depending on individual circumstances, is 15 minutes. If you have comments concerning the accuracy of the time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, Washington, DC 20224, in care of the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Who Must File. — Each person engaged in a trade or business who, in the course of such trade or business, accepts more than $10,000 in cash in one transaction, or two or more related transactions, must file Form 8300. Any transactions conducted between a payer (or its agent) and the recipient in a 24-hour period are related transactions, and must be aggregated and reported as a single transaction if the total amount exceeds $10,000. For other transactions that may be related and special filing requirements for installment payments, see section 1.6050-1 of the regulations.

Certain precious metals dealers, precious stones dealers, jewelry dealers, pawnbrokers, loan or finance companies, insurance companies and travel agencies must file Form 8300 when they have reportable cash transactions. To the extent that the Assistant Secretary of the Treasury (Internal Revenue Service and Operations) requires these financial institutions to file, the information return (Bank Transaction Report, Form BTR-1) is not required to file a report (received or transmitted). Exceptions. — Financial institutions required to file IRS Form 4789 under Section 314(e) of the Bank Secrecy Act (31 U.S.C. 5318(e)) must report cash transactions to the extent they exceed $10,000. Financial institutions include each agency, branch, or office in Washington, DC, New York, Chicago, Philadelphia, Dallas, and Los Angeles, where a person doing business in one or more of the countries below.

(1) a bank (see Definitions);
(2) a broker or dealer in securities, registered or required to be registered with SEC under the Securities Exchange Act of 1934;
(3) a person who engages in a business in dealing in or exchanging currency (for example, a dealer in foreign exchange or a person engaged primarily in the cashing of traveler’s checks);
(4) a person who engages in a business issuing, selling, or redeeming traveler’s checks, money orders, or similar instruments, except one who does so as a selling agent exclusively, or as an incidental part of another business;
(5) an insured institution, or any entity that has been authorized to issue gift cards, or other person engaged in the business of transmitting funds abroad;
(6) a person engaged in business outside the United States or engaged in business in any country in which one of the above, or any other person described in clauses (1) through (5), does business.

Transactions entirely occurring outside the United States are accepted from these reporting requirements, except as provided in section 1.6050(i)-1(d)(4) of the regulations. The United States includes the 50 states and the District of Columbia.

When and Where to File. — File this form by the 15th day after the date of the transaction with the Internal Revenue Service Service Center, P.O. Box 36281, Detroit, MI 48232.

ATTN: RCP or hand carry it to your local IRS office. Keep a copy of each Form 8300 for 3 years from the date you file it.

Identifying Number. — For individuals this is the social security number. For others it is the Federal employer identification number (EIN), which has 9 digits. For aliens or other non-U.S. individuals, use the passport number or alien registration number and indicate the country. Penalties. — Civil and criminal penalties are provided for failure to file a report or to supply information, and for filing a false or fraudulent return.

Statement To Be Provided. — A written statement must be provided to each person named in this form. The statement must be provided on or before January 31 of the year in which the report was completed. The statement must show the name and address of the recipient receiving the cash and the total amount of cash received during the year from the payer, and that the information is being furnished to the IRS. Keep a copy for your records. A copy of the Form 8300 that was filed with the Internal Revenue Service may be used as the statement if the payer had a single transaction for the year.

Specific Instructions

Part I

This part must always be completed. If the individual conducts the transaction for another person, be sure to complete Part II also.

In the address section, enter the permanent street address of the individual conducting the transaction.

In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.

If the individual is an alien or foreign national, enter the alien registration number and passport number and country or other official documents evidencing national or citizenship.

Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver’s license or credit card number), and for the individual conducting the transaction.

Part II

If the individual in Part I is conducting the transaction for himself or herself, do not complete Part II. In all other cases, complete Part II.

For individuals, enter last name, first name, middle initial, if any, and street address in the boxes provided. For other than an individual, enter the complete organization name, address, and employer identification number may be entered in the "Other identifying data" provided.

In the social security block, enter the social security number of the individual for whom the transaction was completed. If the individual has no number, write "None" in this block.

If the individual is an alien or foreign national, enter the alien registration number and passport number and country or other official documents evidencing national or citizenship in the boxes provided. Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver’s license or credit card number).

The estimated average time needed to complete this form, depending on individual circumstances is 15 minutes. If you have comments concerning the accuracy of the time estimate or suggestions for making this form more simple, we would be happy to hear from you. You can write to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, Washington, DC 20224, in care of the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.
Form 8300

Report of Cash Payments Over $10,000 Received in a Trade or Business

Failure to file this form or filing a false form may result in imprisonment.

See instructions on back.

Please type or print.

1 Check appropriate boxes if: a. amends prior report; b. suspicious transaction.

Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual involved, see instructions and check here

3 Last name  
   First name

4 Address (number and street)
   City  State  ZIP code

6 Social security number

9 City  State  ZIP code

10 Country (if not U.S.)

13 Date of birth (see instructions)

14 Method used to verify identity: a. Describe identification
   b. Issued by
   c. Number

Part II Person (See Definitions) on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, see instructions and check here

16 This person is: a. individual or b. organization 17 If funded by another party, see instructions and check here

18 Individual’s last name or Organization’s name

19 First name  
   Middle initial

21 Social security number

23 Address (number and street)
   City  State  ZIP code

24 Occupation, profession, or business

25 Country (if not U.S.)

29 Date of birth (see instructions)

Part III Description of Transaction and Method of Payment

31 Specific description of property or service purchased. Give serial or registration number of car, boat, airplane, etc., address of real estate, etc.

32 Total price $________  
   Amount in $100 bills or larger $________

33 Frequency: a. monthly  b. other (describe)

34 Date of transaction

35 If part of an installment sale, give information below and check box
   a. Number of payments
   b. Amount of each payment
   c. Balloon payment
   d. Paid with foreign currency (if any)

36 Amount (U.S. dollar equivalent)

Part IV Business Reporting This Transaction

37 Name of reporting business

38 Employer identification number

39 Employer identification number

40 Street address where transaction occurred

41 City

42 State  ZIP code

43 Nature of your business

44 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Sign

(Title)  (Date signed)  (Telephone number)

Paperwork Reduction Act Notice.—The requested information is useful in criminal, tax, and regulatory investigations, for instance by directing the Federal Government’s attention to unusual or questionable transactions. Trades or businesses are required to provide the information under 26 U.S.C. 6050i.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 18 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, you can write to the Internal Revenue Service, Washington, DC 20224. Attention: IRS Reports Clearance Officer T/FP or the Office of Management and Budget, Paperwork Reduction Project (1545-0092), Washington, DC 20503.
General Instructions

Who Must File.—Each person engaged in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash in one transaction or two or more related transactions must file Form 8300. A transaction conducted between a payer (or its agent) and the recipient in a 24-hour period is a related transaction and must be aggregated and reported as a single transaction if the total amount exceeds $10,000. Also, a transaction is related even though it occurs during a period of more than 24 hours if the recipient knows, or has reason to know, that each transaction is one of a series of connected transactions. In addition, this form may voluntarily be filed for a single transaction, even if it does not exceed $10,000.

Multiple Payments.—How and when you must report receipt of cash deposits, cash installment payments (or their substitute payments) depend upon theollar amounts of the related and/or single payments. If the initial payment exceeds $10,000, it must be reported; if the related payments do not exceed $10,000, the recipient must add together the initial payment and subsequent payments made within one year until the total exceeds $10,000, at which time the report must be filed. If subsequent payments, singly or in the aggregate, received within any one-year period exceed $10,000, they must be reported separately within 15 days of the date they exceed $10,000. If they have not been previously reported, if two or more separately reportable payments are received less than 15 days apart, they may be filed on a single report. In this case, the report is due within 15 days of receipt of the first payment. If subsequent payments, singly or in the aggregate, received within any one year do not exceed $10,000, they need not be reported.

Section 6050(i) of the Treasury Regulations provides for periodic reporting of cash receipts, including:
(1) Financial institutions must file Form 4794, Currency Transaction Report, for cash transactions in excess of $10,000 or $3,000 for travelers checks or university checks used for payment for non-taxable transactions.
(2) Casinos required to file (or exempt from filing) Form 8267 are exempt from filing Form 8300 as long as they remain in the nongaming business (such as shops, restaurants, etc.). The casino must report on Form 8300 receipt of cash in excess of $10,000.
(3) Cash received by a person other than in the person’s regular course of business or trade is not reportable by the person receiving the cash, except from the reporting requirements. The United States includes the 50 states and the District of Columbia. However, if any part of the transaction occurs outside of the United States, the recipient is subject to United States taxation under the Internal Revenue Code, the transaction must be reported by the person receiving the cash.
(4) Cash transactions that occur entirely outside of the United States and its possessions are not reportable by the person receiving the cash, except from the reporting requirements. The United States includes the 50 states and the District of Columbia. However, if any part of the transaction occurs outside of the United States, the recipient is subject to United States taxation under the Internal Revenue Code, the transaction must be reported by the person receiving the cash.
(5) An agent who: (a) receives cash from a principal, (b) uses all of the cash within 15 days in a cash transaction that is reportable on Form 8300 or (c) receives any information necessary to complete Part II of Form 8300 other than information received from the principal in a cash transaction that does not have to be filled in Form 8300 for the report must file Form 8300 for the report within 15 days of receipt of the cash. When and Where To File.—File this form by the 15th day of the month following the calendar month in which the transaction occurs.

Penalties—Civil and criminal penalties including up to 5 years in prison, or a $250,000 fine, or both, are imposed for failure (or causing the failure) to report, for filing a false or fraudulent report, and for structuring a transaction. Statement To Be Provided.—All written statement must be provided to each person named in Part I of this form or before January 31 of the year following the calendar year in which this report is made. The statement must show the name and address of the business, the total amount of reportable cash received, and that the information was furnished to the IRS. State a penalty included in this report.

Specific Instructions

Item 1.—If you are reporting a suspicious transaction (see Definitions), check Box 19. For a suspicious transaction, you are also encouraged to telephone the local Internal Revenue Service Criminal Investigation Division. If you do not report it, call toll-free 1-888-820-BSA-CTRS.

Part I.—The part must always be completed.

Item 1. — If the transaction is part of an installment sale, check the box, in item 35a, enter the amount of payments received in excess of $10,000, enter the payment date that the aggregate amount to exceed $10,000. Also, multiple payments in item 35b. Item 35c. Check the appropriate box.

When the initial receipt or $10,000, the recipient must file Form 1099-B, or 20 the P

Payments.—ow and when the recipient is

imposed on the other person(s) on additional sheets of paper and attach it to this report.

Item 5.—If the individual in Part I is conducting the transaction on behalf of another person (e.g., a business). Item 13.—Enter any numerical for the date of birth of the individual named in Part I. For example, if the individual's birth date was July 6, 1960, enter 07 06 60.

Item 14.—If you verify the name and address of the individual identified in Part I, use the name and address of the individual as indicated in Part I. Use these terms such as merchant, business name, etc., and non-narrative terms such as merchant, business name, etc.

Item 13.—Enter six numerals for the date of birth of the individual named in Part I. For example, if the individual's birth date was July 6, 1980, enter 07 06 80.

Item 15.—If the transaction is being conducted on behalf of more than one person (e.g., 2 persons jointly purchasing a vehicle), check the box or enter the name of the person or group of persons that conducted the transaction on behalf of each of the persons.

Item 16.—If the person identified in Part I is an individual, check the "individual" box. For any person other than an individual, check the "organization" box. Check both boxes if the transaction is on behalf of both an individual and an organization.

Item 17.—Check the box if any of the cash transactions is being reported as a party to a party or parties not identified in Part I or II. Provide all the information requested in Part I or II if the party or parties on additional sheets of paper and attach it to this report.

Item 18.—If the person on whose behalf the transaction was conducted is an individual, put his or her last name in Item 18, first name in Item 19, and middle initial in Item 20. If the person is an organization, put its name in Item 18 and leave Items 19 and 20 blank.

Item 21.—If the person is an individual, enter his or her social security number; if not an individual, enter its employer identification number. If the person does not have a social security or employer identification number enter "None."
FORM 8300

Report of Cash Payments Over $10,000
Received in a Trade or Business

Failure to file this form or filing a false form may result in imprisonment.

See instructions. Please type or print.

1. Check appropriate boxes if: a. [ ] amended prior report; b. [ ] suspicious transaction.

2. [ ] Paid in cash.

3. Identity of Individual From Whom the Cash Was Received

   a. Last name
   b. First name
   c. Middle initial
   d. Social security number

4. Address (number, street, and apt. or suite no.):

5. City

6. State

7. ZIP code

8. Occupation, profession, or business

9. Other:

10. City

11. State

12. ZIP code

13. Country (if not U.S.)

14. Date of birth

15. Method used to verify identity:

   a. Description identification

   b. Issued by

16. Person (See Definitions) on Whose Behalf This Transaction Was Conducted

   a. Individual
   b. Organization

17. Individual's last name or Organization's name

18. First name

19. Middle initial

20. Social security number

21. Employer identification number

22. Doing business as (DBA) name (see instructions)

23. Employer identification number

24. Address (number, street, and apt. or suite no.):

25. Occupation, profession, or business

26. Other:

27. City

28. State

29. ZIP code

30. Country (if not U.S.)

31. Date of transaction

32. Description of Transaction and Method of Payment

   a. Personal property purchased
   b. Real property purchased
   c. Business services provided
   d. Intangible property purchased
   e. Exchange of cash
   f. Escrow or trust funds
   g. Other (specify)

33. Total price

34. Amount of U.S. currency received

35. Amount in $10,000 bills or larger

36. Amount of cash received in other than U.S. currency

37. If part of an installment sale, give information below and check box:

   a. Number of payments
   b. Amount of each payment
   c. Frequency: monthly or other (describe)
d. Balloon payment (amount)

38. Date of transaction

39. Name of business

40. Employer identification number

41. Nature of your business

42. Address (number and street) where transaction occurred

43. City

44. State

45. ZIP code

46. Nature of your business

Signature

Authorized signature (See instructions) (Type or print signer's name below) 

[ ] (Title) [ ] (Date signed) [ ] (Telephone number of business)

G4 No. 625196

Form 8300 (Rev. 2-92)
### Multiple Parties

(Complete applicable parts below if box 2 or 15 on page 1 is checked)

#### Part I

**Continued—Complete if box 2 on page 1 is checked**

<table>
<thead>
<tr>
<th>3 Last name</th>
<th>4 First name</th>
<th>5 Middle initial</th>
<th>6 Social security number</th>
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<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>7 Address (number, street, and apt. or suite no.)</th>
<th>8 Occupation, profession, or business</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>9 City</th>
<th>10 State</th>
<th>11 ZIP code</th>
<th>12 Country (if not U.S.)</th>
<th>13 Date of birth (see instructions)</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>14 Method used to verify identity:</th>
<th>a Describe identification</th>
</tr>
</thead>
<tbody>
<tr>
<td>b issued by</td>
<td>c Number</td>
</tr>
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</tbody>
</table>

#### Part II

**Continued—Complete if box 15 on page 1 is checked**

16 This person is an: 0 individual or 1 organization 17 If funded by another party, see instructions and check here . 18 Individual’s last name or Organization’s name 19 First name 20 Middle initial 21 Social security number

22 Doing business as (DBA) name (see instructions) 23 Alien identification: a Describe identification b issued by c Number 24 Address (number, street, and apt. or suite no.) 25 Occupation, profession, or business

26 City 27 State 28 ZIP code 29 Country (if not U.S.) 30 Date of birth (see instructions)
Paperwork Reduction Act Notice.—The requested information is useful in criminal, tax, and regulatory investigations, for instance by directing the Federal Government's attention to unusual or questionable transactions. Trades or businesses are required to provide the information under 26 U.S.C. 6051.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 27 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form more simple, you can write to both the Internal Revenue Service, Washington, DC 20224; Attention: IRS Reports Clearance Officer T/F.P, and the Office of Information and Regulatory Affairs, Paperwork Reduction Project (1545-0929), Washington, DC 20503. DO NOT send this form to either of these offices. Instead, see When and Where To File below.

Changes You Should Note

Section 6050 of the Internal Revenue Code was revised by the Revenue Act of 1990 to provide that, to the extent provided by the regulations, the term "cash" includes any monetary instrument, whether or not in bearer form, with a face amount of not more than $10,000 (other than certain checks). The regulatory change in the definition of cash is effective for cash amounts received on or after 02/02/92. See the instructions for more details. See Definitions below for more details.

General Instructions

Who Must File.—Each person engaged in a trade or business who, during that trade or business, receives more than $10,000 in cash in one transaction or two or more related transactions, must file Form 8300. Any transaction conducted between a payer (or its agent) and a recipient in a 24-hour period are related transactions. Transactions are considered related even if they occur over a period of more than 24 hours. In such a case, the recipient knows, or can reasonably know, that each transaction is one of a series of connected transactions. This form may be filed voluntarily for any suspiscious transactions (see Definitions), even if it does not exceed $10,000.

Multiple Payments.—How and when you must report cash deposits, cash installment payments, or other similar payments or prepayments on the dollar amounts of the initial and subsequent payments.

If the initial payment exceeds $10,000, it must be reported within 15 days. If the initial payment does not exceed $10,000, the recipient must add the initial payment and all subsequent payments made within 1 year. When the total exceeds $10,000, you must file Form 8300 within 15 days. If subsequent payments, alone or combined, received within any 1-year period exceed $10,000, they must be reported separately within 15 days of the date they exceed $10,000 if they have not been previously reported. (If more than one report is required to be filed within a 15-day period, a single, combined report may be filed instead. The combined report must be filed no later than the due date for filing the first report of the reportable cash received, or combined, received within the calendar year and not exceeding $10,000, need not be reported.)

Exceptions.—Regulations section 1.6050-1 provides for exceptions to the reporting requirements, including:

(1) Financial institutions required to file Form 4789, Currency Transaction Report, are exempt from filing Form 8300 for the same transaction. However, nonbanking businesses (such as shops, restaurants, and hotels) at the casinos must report on Form 8300 receipt of cash in excess of $10,000.

(2) Casinos required to file (or exempt branches) are exempt from filing Form 8300 for the same transaction. However, nongaming businesses (such as shops, restaurants, and hotels) at the casinos must report on Form 8300 receipt of cash in excess of $10,000.

(3) Cash received by a person other than in the person's trade or business is not reportable.

(4) Cash transactions that occur entirely outside the United States are generally exempt from the reporting requirements. The United States includes the 50 states and the District of Columbia. However, if any part of the transaction occurs in Puerto Rico, or a possession or territory of the United States, and the recipient is subject to the general jurisdiction of the IRS under the Internal Revenue Code, the transaction must be reported by the recipient.

(5) An agent who: (a) receives cash from a principal, (b) uses all of the cash within 15 days in a cash transaction that is reportable on Form 3472 or 4789, and (c) discloses all the information necessary to complete Part II of Form 8300 to the principal of the cash in the second transaction, does not have to file Form 8300 for the initial receipt of the cash.

When and Where To File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service, Detroit Computing Center, P.O. Box 6261, Detroit, MI 48204, or hand carry it to your local IRS office. Keep a copy of each Form 8300 for 5 years from the date you file it.

Penalties.—Civil and criminal penalties, including up to 6 years imprisonment, are provided for failure (or causing the failure) to file, for filing (or causing the filing) of a false or fraudulent report, and for structuring a transaction.

Statement To Be Provided.—You must provide a written statement to each person named in Form 8300 on or before January 31 of the year following the calendar year in which the cash is received. The statement shall contain the name and address of the business, the total amount of reportable cash received, and that the information furnished was furnished to the IRS. Keep a copy for your records.

Definitions

Person.—The term person means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities, including organizations that are exempt from tax.

Recipient.—The term recipient generally means the person receiving the cash. Each store, division, branch, department, agent, headquarter, or office (branch) (regardless of the type of transaction) comprising a portion of a person's trade or business shall be a separate recipient. However, a branch will not be considered a separate recipient if the branch (or central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making cash payments to other branches of such person's trade or business.

Transaction.—The term transaction includes (but is not limited to) the purchase of goods, services, personal or real property, and intangible property by a customer; a debt obligation paid for with cash; and the receipt and conversion of cash to a negotiable instrument (i.e., a receipt of cash from a person in exchange for a check); and the receipt of cash to be held in escrow or trust.

Cash.—Amounts received before 02/02/92. The term cash means the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued.

Cash.—Amounts received on or after 02/02/92. The term cash means, in addition to the above definition, a cashier's check, bank draft, traveler's check, or money order having a face amount of not more than $10,000 received in a designated reporting transaction as defined below, or received in any transaction in which the recipient knows that such instrument was used generally in connection with a retail sale.

Designated Reporting Transaction.—A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of:

1. A consumer durable, which is an item of tangible personal property of a type suitable under ordinary usage for personal consumption or use that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than $10,000.

2. A collectible, which is any work of art, rug, antique, metal, gem, stamp, or coin as described in section 408(m)(2)(A) through (B)(without regard to section 408(m)(3)).

3. A travel or entertainment activity, which is an item of travel or entertainment that pertains to a single transaction or event that are sold in the same transaction (or related transactions) exceeds $10,000.

Retail Sale.—The term retail sale means any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

Exceptions.—Unless the recipient knows that it is being used in an attempt to avoid
the reporting of the transaction, a cashier's check, bank draft, traveler's check, or money order received, or the statement from the bank, or similar document. If the payment is made in a foreign currency, include the amount of the currency received and the exchange rate (e.g., the total cost of a vehicle purchased, cost of catering service, exchange of currency) in item 33. Enter the amount of U.S. currency received, together or serially issued, in item 35. Show only nearest dollar amounts. Round 50 cents or more to the next whole dollar.

Enter in item 36a the amount of all cash received, cashier's check(s), bank draft(s), traveler's check(s), and/or money order(s) each having a face amount of not more than $10,000 and any currency and/or coin of another country received. See the definitions of Cash, Provide a specific description of these items in item 36b. This should include the name of the issuer, date issued, amount and number of each cashier's check, bank draft, traveler's check, and/or money order plus the country of issuance and amount (in U.S. dollar equivalent) of any currency and/or coin of another country. If more space is required enter the information required by item 36b on additional sheets of paper and attach them to this form.

Specific Instructions

Complete all parts, Skip Part IV if the individual in Part I is conducting the transaction on his or her behalf only.

Item 1.—If you are reporting a suspicious transaction (see definitions), check box 1b. For a suspicious transaction, you are also encouraged to contact your local Internal Revenue Service Criminal Investigation Division. If you do not know the number, please call toll-free 1-800-662-2277.

Part I

Item 2.—If two or more individuals conducted the transaction you are reporting, check the box and complete Part I on any one of the individuals. Provide the same information on the other individual(s) on the back of the form. If more than three individuals are involved, provide the same information on additional sheets of paper and attach them to this form.

Item 8.—Enter the social security number of the individual named. If the individual has no number, enter "None." Item 8.—Use fully descriptive terms such as plumber or attorney, and not nondescriptive terms such as merchant, businessman, or self-employed.

Item 13.—Enter six numerals for the date of birth of the individual named. For example, if the individual's birth date was June 7, 1950, enter 07 06 60. Item 14.—You must verify the name and address of the individual identified. Verification must be made by examination of a document normally acceptable as a means of identification when cashing checks (for example, a driver's license, passport, or other official document). In item 14a, enter the type of document used to verify the identification. In item 14b, identify the issuer of that document. In item 14c, enter the document's number. For example, if the individual has a Utah driver's license, enter "driver's license" in item 14a, "Utah" in item 14b, and the number in item 14c.

Part II

Item 15.—If the transaction is being conducted on behalf of more than one person (for example, if the individual in Part I is buying a vehicle on behalf of two persons), check the box and complete Part II for any one of the persons. Provide the same information requested in Part II on the other persons on the back of the form. If more than three persons are involved, provide the same information on additional sheets of paper and attach them to this form.

Item 16.—If the person named is an individual, check the "individual" box. For any person other than an individual, check the "organization" box. Check both boxes if the transaction is on behalf of both an individual and an organization.

Item 17.—Check the box if any of the cash received is from a party or parties not identified in Part I or II. Provide the same information on that party or parties on additional sheets of paper and attach them to this form.

Item 18 through 21.—If the person on whose behalf the transaction was conducted is an individual, complete items 18, 19, and 20. Enter his or her social security number (SSN) in item 21. If the person does not have one, if the individual is a sole proprietor and has an employer identification number (EIN), enter both the SSN and EIN in item 21. If the person is an organization, put its name in item 18 and its EIN in item 21. If it does not have an EIN, enter "None" in item 21.

Item 22.—If a sole proprietor or other organization named in items 18-21 is doing business as (DBA) under a name other than that entered in items 18-20, enter the DBA name here.

Item 23.—If the person is an alien without an SSN, complete this item. Enter a general description of the type of official document issued to that person in item 23a (e.g., "passport"), the country that issued the document in item 23b, and the document's number in item 23c.

Part III

Item 31.—Check the appropriate box(es) that describe the transaction. If the transaction is not specified in boxes a-h, check box i (e.g., car lease).

Items 33 through 36a.—Provide the total price of the goods purchased, services provided, and/or cost of the lease(s), etc. (e.g., the total cost of a vehicle purchased, cost of catering service, exchange of currency) in item 33. Enter the amount of U.S. currency received, together or serially issued, in item 35. Show only nearest dollar amounts. Round 50 cents or more to the next whole dollar.

Enter in item 36a the amount of all cash received, cashier's check(s), bank draft(s), traveler's check(s), and/or money order(s) each having a face amount of not more than $10,000 and any currency and/or coin of another country received. See the definitions of Cash, Provide a specific description of these items in item 36b. This should include the name of the issuer, date issued, amount and number of each cashier's check, bank draft, traveler's check, and/or money order plus the country of issuance and amount (in U.S. dollar equivalent) of any currency and/or coin of another country. If more space is required enter the information required by item 36b on additional sheets of paper and attach them to this form.