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February 27, 1995

Judge Richard P. Conaboy, Chairman  
 United States Sentencing Commission  
 1 Columbus Circle N.E.  
 Suite 2-500, South Lobby  
 Washington D.C. 20002-8002

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SUBJECT: U.S. Sentencing Commission's Guidelines on Laundering Monetary Instruments;  
 Abuses of the "sting" money laundering statute, 18 U.S. Code, Section 1956 (a)(3);  
 Need for sentencing guideline amendments; Need to amend or repeal 18 U.S. Code,  
 Section 1956 (a)(3). a statute which has been used unconstitutionally and has  
 become an instrument of oppression.

Dear Judge Conaboy:

Reference is made to the U.S. Sentencing Commission's Proposed Amendments to the Sentencing Guidelines for which the Commission held a public hearing on March 22, 1993. The purpose of my letter is:

- (1) to inquire why the Commission's proposed amendments have not yet been implemented when there was such overwhelming support by the Commission itself and by participants who testified at the hearing;
- (2) to ask for the Commission's support in calling immediate Congressional attention to the urgent need for ratification of these proposed sentencing amendments and for reevaluation and modification of the money laundering laws, particularly of the "sting" money laundering statute (18 U.S. Code, Section 1956 (a)(3)). This is a law which, in its present form, prearranges a "crime" and its evidence with guaranteed conviction and level of sentencing, in violation of Constitutional amendments, including the Eighth, in that it produces sentences so anomalous that it undermines the very uniformity that Congress sought to achieve when it adopted sentencing guidelines; This statute has become an instrument of oppression.
- (3) to bring to your attention, as an example, how the abuse of 18 U.S. Code, Section 1956 (a)(3) in Hawaii and its unjustifiable sentencing levels have resulted in the orchestrated conviction and ludicrous 41 month sentencing of my husband, Dr. George Pararas-Carayannis, a prominent international scientist with 25 years of outstanding U.S. government service, 35 years of community service, a man who never had a criminal record (not even a traffic ticket) and who never engaged in any type of criminal activity.

As an American and as a member of The American Association for Constitutional Laws and Justice, (AACLJ), I am particularly concerned that abuses in the application of 18 U.S. Code, Section 1956 (a)(3) and in sentencing are continuing, in spite of the public opposition clearly evidenced at the Commission's own hearing. I am particularly concerned and very angry of my husband's

ludicrous conviction and sentencing for a crime that did not occur, for which there was no victim, for an alleged "sting" offense which was never represented as such, and which -if indeed had occurred - would have been at worse a petty misdemeanor punishable with a small fine and probation. Instead, **more than \$2 million of taxpayers' money has been already wasted in this frivolous prosecution** (money which could have been spent to fight real crime) and a law-abiding, professional scientist contributing enormously to society was destroyed emotionally, physically, financially and professionally. In support of my concerns and request for action on the above stated matters, I wish to bring to your attention the following documentation:

(A) The U.S. Sentencing Commission's own report and record of its hearing of March 22, 1993, summarizing the criticism expressed pertaining to the abuse of 18 U.S. Code, Section 1956 (a)(3) and its associated disproportionate sentencing levels, as well as of the overwhelming support the Commission's proposed amendments received.

(B) To illustrate further the statute's improper application and extreme and cruel sentencing level under the present guidelines, I will provide a brief account of how the statute was grossly abused to target selectively and to prejudicially prosecute my husband (a member of a Greek ethnic minority), in order to destroy him emotionally, financially and professionally, and to convict and sentence him to a preposterous 41 months imprisonment for alleged "laundering of monetary instruments". This was for an alleged petty misdemeanor offense that did not occur, which was not represented as such and for which there was no victim (other than my husband). This ludicrous and unprecedented sentence was imposed on my husband in spite of the fact that the stress of the four year long, unreasonable and relentless prosecution and persecution recently culminated in a nearly fatal heart attack.

**A. Criticism of the "Sting" Money Laundering Statute. Support of U.S. Sentencing Commission's Proposed Amendments.**(U.S. Sentencing Commission's Public Hearing on Proposed Sentencing Guideline Amendments, March 22, 1993, Washington DC)

The U.S. Sentencing Commission generated an internal report proposing amendments to its own sentencing guidelines for money laundering offenses. Specifically for offenses prosecuted under the "sting" money laundering statute the Commission proposed amendments would tie the sentencing level to those of the underlying "sting" offenses, when properly represented. The following are abstracted portions of the U.S. Sentencing Commission's hearing proceedings pertaining to sentencing levels for money laundering offenses and particularly those prosecuted via the "sting" statute. There was an overwhelming support for the Commission's proposed amendments from those who testified at the public hearing. There was also severe criticism of the abuses of 18 U.S. Code, Section 1956 (a)(3) and its associated disproportionate sentencing levels.

One of the people that testified at the public hearing was one of the principal authors of the money laundering statutes, Mr. Charles W. Blau (Transcripts of the hearing p.256-261). Mr. Blau is presently in private practice, but has worked for the Department of Justice in different capacities, including Chief of Narcotics, Associate Deputy Attorney General and Associate Attorney General. He played an active role in drafting the money laundering statutes and the memorandum of understanding between the various law enforcement agencies in using these statutes. He was extremely critical of the unexpected abuses of the laws that he helped draft. At the hearing he stated:

*"In looking at these statutes, I think basically the intent, or at least my intent, was to create a broad criminal statute which would reach every kind of sophisticated money laundering that was out there. In short, I thought, and I think basically the people that were in the process with me felt, that the real intent of this statute was to get at professional money launderers, principally those associated with narcotics and organized crime.*

*In retrospect, I think there are probably two mistakes that we made....I think I would have liked to have limited this statute to instances where there was sophisticated criminal activity present, either with narcotics or with organized crime.*

*Secondly, I think I would have required the Department (Justice) to have exercised some central control over the use of this statute much more so than we did. The Department, in my view, basically has failed to have what I would call a realistic or a centralized process dealing with the use of this statute. There are, in essence, 94 separate policies, and each U.S. Attorney, basically, in essence, decides how the statute is going to be abused or used, as the case may be.*

*What we are seeing at least in my part of the country, which is Texas and the Southwest, is a continual threatening of the use of the money laundering statute in non-drug and non-organized crime cases."*

On page 259 of the Sentencing Commission's Hearing proceedings, Mr. Blau continues:

*"My view, however, I think is that this statute is a very, very important powerful prosecution tool. I think that it has tremendous potential to be abused. I think in at least my area of the country, and particularly in the white collar non-drug area, we are seeing an abuse of the use of this statute. Plea negotiations, in short, have been replaced by threat negotiations, and using a very substantial and heavy-wielding club, the money laundering statute. This is a real threat. One may argue that it is either good plea bargaining on the part of the government or, alternatively, it is a little bit overzealous and coercive of the criminal justice process.*

*The question that I raise with the use of this statute, without any centralized controls, is whether the criminal justice process is being undermined by the use of a very easily proven criminal statute which is not connected in any way, shape or form with any organized crime activity or with organized drug activity. And the question with these guidelines has been, should a person be subjected to severe criminal sanctions, when his conduct amounts to no more than the base underlying offense. It is a bit like using a nuclear weapon against a single individual.*

*I think these changes proposed by the Commission are essential in bringing a little reality back into the prosecution charging process. I would have preferred that the department basically would have taken this on itself, would have overseen basically the use of this statute and would have culled out the cases where it was clearly an abuse of process to bring such an enormous charge against underlying conduct which did not deserve it.*

*My view of these guidelines, until basically Congress gets around to amending the statute, is that the underlying offense should be relevant and important factor in determining what penalties for money laundering connected with those type of offenses are.*

*I do believe that the courts are going to I think reach a position where they will not forever tolerate these charging abuses, and a very valuable prosecution tool will be unnecessarily limited, or bad case law. So I support your amendments completely."*

Mr. Stephen R. LaCheen, representing the Pennsylvania Association of Criminal Lawyers, in his endorsement of the Commission's guideline amendments commented (page 75):

*"We also comment favorably on your money-laundering amendments, as well as the amendments regarding sting operations, and there both, again, informed out of*

*the concern to avoid manipulation of the guidelines in the plea-bargaining process, which in vast majority of cases, as you know, are resolved in plea negotiations."*

Mr. James M. Becker, representing the Criminal law Committee of the Federal Bar Association, commented as follows (p. 157):

*".....Our group has identified several instances in the Eastern District of Pennsylvania, and we think they exist nationwide, where the mere addition of that money laundering charge, especially under 18 U.S.C. sections 1956 and 1957, artificially raises the guideline level beyond that of the underlying offense, when there is no real money laundering activity that somehow makes the person's conduct more culpable than if they were just charged with a fraud offense, so for that reason, we applaud the proposed Amendment No. 20, heartily endorse it."*

Mr. Chuck Morley, an expert on the subject of money laundering and currency reporting laws under the Bank Secrecy Act, having served with the Criminal Investigation Division of the IRS and as Chief investigator of the U.S. Senate Subcommittee on Investigations, stated (p. 224):

*".....I come here today to urge you to approve the money laundering and the structuring guidelines as proposed by the committee staff." ".....the revised guidelines reflect greater sensitivity to such factors as sophistications of money laundering conduct." ".....the staff (Sentencing Commission) found that, historically, prosecutors have been stretching these guidelines significantly,..."*

*"Offenses that technically qualify as money laundering are frequently simply incidental to or component parts of the underlying crime. This has given rise to extensive disproportionate sentencing.....The sentencing report indicated that 68 percent of the defendants convicted of structuring either didn't know or did not believe the funds were illegal. .....Yet, these people could still get the same type of sentence as a major money launderer, somebody involved in a huge smurfing operation. So do the guidelines work? I don't think they work, unless what we are trying to do is fill the jails up....." The Justice Department has said to me informally that we are trying to decriminalize money laundering or that we are trying to greatly lessen the offense of money laundering....." ".....To continue under the current guidelines is to ignore the realities of money laundering totally, while continuing to mete out disproportionate and unfair sentences to both drug and non-drug defendants."*

Mr. David Stewart of the law firm of Ropes and Gray, commented:

*The basic principle announced by the Commission, which I strongly endorse, is an attempt to tie the base offense levels for this offense (money laundering) more closely to the underlying conduct that was the source of the illegal proceeds.....in non-drug offenses you really do get an extraordinary increase in the penalty by including the money laundering charge. ....I would even report that prosecutors confirm that is why they add money laundering counts, because the guidelines are so powerful with them. It is a bigger hammer. One case I saw that was 27 months in prison versus 6 months in prison.....Finally, I would note my agreement with the observation to the American Bar Association on the subject of stings, again, the concept of the money laundering offense to the underlying offense seems to me very important in that context, as well. It is a little trickier, of course, because there is no true underlying offense, so it has to be the represented underlying offense, but, again, it seems to me the proper ways to approach the problem."*

Mr. Paul B. Bergman, representing the New York Council of Defense Lawyers, had the following comments:

*"I think that this proposed amendment on the guidelines for money laundering goes one way towards eliminating what we consider to be unfair leverage and sometimes abusively exercised leverage with money laundering."*

**B Illustration of the abuse of 18 U.S. Code, Section 1956 to (a)(3) to convict and sentence Dr. George Pararas-Carayannis.**

18 U.S. Code, Section 1956 to (a)(3), (alleging "laundering monetary instruments") was abused to prejudicially target, selectively prosecute, and wrongfully convict and sentence my husband, Dr. George Pararas-Carayannis (a member of a Greek ethnic minority), for the purpose of terminating him from 25 years of honorable Federal service. On December 21, 1994, he was sentenced to 41 months of imprisonment, in spite of the fact that he had a recent, almost fatal heart attack and two angioplasties. His doctors testified at the sentencing hearing on the seriousness of his emotional trauma, progressing congestive heart failure and the fact that incarceration will be detrimental to his health and may even result in his death. Arguments for departure were made that his extraordinary impairment and advanced age were reasons to impose a sentence other than imprisonment, under U.S.S.G. Ch. 1, Part A, 4(b) and Chapter 5, Part K of the Guidelines (U.S.S.G. § 5K2.0 and U.S.S.G. § 5H1.4), and as honored in precedent cases (*United States v. Long*, 977 F.2d 1264 (8th Cir. 1992) and *United States v. Lara*, 905 F.2d 599, 605 (2nd Cir. 1990)). These arguments were rejected.

Ironically, my husband was not found guilty of an actual crime but of a "sting", make -believe "crime" for his alleged, circumstantially established, "state of mind". The alleged underlying offense of the "sting" was a fabricated petty misdemeanor, which was not even represented as such as due process of the law requires. There was no victim for this hypothetical "crime" and there was no demonstration of his knowledge or intent of breaking any law. He was not charged with violation of either the underlying, non-represented State petty misdemeanor, or of any federal Travel Act or Rico violations. These federal laws require substantive rather than hypothetical state offenses and cannot borrow the "sting" provision of another statute. These laws were only used for definitional purposes in "structuring" the statutory tracking necessary to bridge the hypothetical State petty misdemeanor and thus fabricate my husband's conviction under the money laundering "sting" statute, 18 U.S. Code, Section 1956 to (a)(3), alleging the hypothetical "laundering of monetary instruments". Through such nebulous statutory tracking, my husband's sentencing level was artificially and enormously escalated. This is an unprecedented and preposterous extrapolation of the money laundering "sting" statute for an alleged State petty misdemeanor violation that does not even come under the Travel Act and certainly not under any of the RICO offenses.

There were violations of my husband's constitutional rights under the Fourth, Fifth, Sixth, Eighth and Fourteenth amendments in selectively targeting him and prejudicially prosecuting him. He was not engaged in an ongoing criminal misconduct to justify a "sting". Probable cause for an indictment was obtained through misrepresentations and false information from a coerced government witness (a Confidential Informer) threatened with deportation to Japan, and whose criminal record, questionable credibility, wrong motivation and other exculpatory materials (proving my husband's innocence) were improperly withheld from the Grand Jury. This became clear at trial following this government key witness's testimony. The "sting" prosecution against my husband was highly selective and prejudicial for the purpose of removing him from 25 years of honorable Government service. The scenario of the "sting" was artificially orchestrated to fabricate nexus with his work place in order to cause his termination from Federal Service.

Clearly, my husband's conviction was improperly obtained through the abuse and misapplication of Title 18, U.S. Code, Section 1956 (a)(3), for an alleged fabricated offense which is outside the

intent of Congress. Allegedly he "laundered monetary instruments" representing a few hundred dollars for a hypothetical government escort service. There were serious misinterpretations and statutory extrapolations of the statute in escalating artificially a petty misdemeanor offense level of a non-represented State, underlying, hypothetical offense (and its alleged "monetary instrument proceeds" - something that the banks process every day) to the sentencing level of a 22 "money laundering" offense. Congress intended the law to apply to organized crime involved in drug trafficking, not for regulating or punishing hypothetical, non-represented petty misdemeanors.

Furthermore, there were serious violations of procedural and evidentiary rules before and during the trial in orchestrating my husband's conviction. The videotaped "evidence" of his conversation with the undercover agent was sent twice to a government audiovisual laboratory in the Washington D.C area for "enhancement" - a euphemism for tampering. There was no chain of custody for this "evidence". The tapes sent back as "originals" were altered copies which had been grossly tampered (See feature article on tampering videotapes in the February 1994 issue of Scientific American entitled, "Seeing is not Believing"). Critical exculpatory portions showing my husbands' innocence were crudely erased from these tapes, blaming later television station interference. The most critical of the videotapes contained over 150 inaudible parts. The jury was provided by the government prosecutor with creatively-edited transcripts as an "aid" in understanding the inaudible "evidence". Jurors were seen taking written notes from these creative transcripts because they could not hear what was on the videotapes. After being admitted officially as "evidence" in court, and during trial, it was accidentally discovered that these videotapes, transcripts, and other government evidence were illegally being removed from the court by the government prosecutor every afternoon after trial because allegedly the court did not have an evidence storage facility (this has been a standard practice of handling evidence by the Hawaii Federal District Court). Worse yet, during trial, the videotapes admitted as evidence were improperly removed from court and taken by the government prosecutor to a hotel room (Hilton Hawaiian Village Hotel, Room 1362). The room was registered to a government audiovisual expert who had been brought in from the Washington D.C. area, together with his electronic equipment. He had set up an audiovisual laboratory during the entire duration of the six week trial to "enhance" the evidence (from approximately November 1 to December 21, 1993). At a special hearing outside the presence of the jury, government witnesses (IRS agents) testified and confirmed that indeed the court's evidence had been removed without the Court's authorization, during trial, and taken to the hotel room where electronic equipment capable of tampering had been brought in. Allegedly nothing was done to the videotapes. This type of misconduct is unprecedented and legal research failed to find a single case of such outrageous handling of the court's evidence anywhere else in the country.

The jury was not allowed to hear these facts or hear the testimony of the government witness or that of the audiovisual expert who was occupying the hotel room. Regardless, the jury was allowed to view this tainted evidence (the videotapes) during their 12 day long deliberation period. The erroneous claim was made that it was my husband and his attorney who wanted the jury to view this tainted evidence when, in essence (and the record shows it), they had complained vigorously and demanded that the tainted evidence should be stricken and not be shown. Finally, there were erroneous jury instructions on entrapment and what constitutes "predisposition". Exculpatory evidence showing my husband's innocence and wrong motivation for his prosecution was withheld from the trial jury. His defense of entrapment was nullified in advance through the orchestrated, Hollywood-like scenario and design of the "sting", and through the confusing 75-page jury instructions given to the jury at the end of the trial. In these instructions, the nebulous statutory tracking pertaining to the "definitional" Travel Act violation necessary for my husband's conviction was completely de-emphasized and buried near the end. The jury was totally confused as to the elements of the "crime" for the alleged "laundering of monetary instruments" under the money laundering "sting" statute. They were further confused by the vague and confusing definitions of what constitutes "proceeds", "unlawful activity", "some form of unlawful activity" and "though not necessarily which form of unlawful activity". Worse yet, facts and important

testimony pertaining to the "validity" of the evidence and the illegality of removing it from court during trial, was withheld from the jury.

It is interesting to note that the jury's verdict of guilty on only two of the seven trumped up counts of "laundering monetary instruments" (amounting to an insignificant amount of money), was reached with great difficulty and after a six week trial and twelve days of deliberations. It was not a clear cut decision. The jury looked and asked questions as to when entrapment begins having determined that there was entrapment because of the outrageous government conduct in the structuring of the "sting". However, the design of the "sting" nullified this defense by creating circumstantially and artificially "predisposition". The jury was forced to abandon entrapment. Nonetheless, after 11 days of deliberations, the jury found my husband not guilty on five of the seven trumped up counts of laundering monetary instruments. However, the jury was confused by the instructions. They were "hung" on the two "sting" money laundering counts of "disguising and concealing" the "proceeds" of the hypothetical government escort service. The instruction was clear on this issue. If he "deposited in an intrastate bank" the two checks from American Express and Diner's that was "disguising and concealing", even if he declared it on his income tax return. This is the low threshold element of the "crime" that always guarantees conviction under the "sting" money laundering statute (18 U.S. Code, Section 1956 (a)(3)). The jury was forced to deliberate further and resolve their "hung" decision on this issue. It was three days before Christmas and the trial had lasted almost two months. The members of the jury were anxious to go home. At that time they were allowed to view the most critical of the videotapes taken to the hotel room (the one which had 150 inaudible portions). They were given once again the creatively-edited copies of the transcripts as an "aid" to help understand the inaudible portions of this further tempered "evidence". Jurors were again seen taking written notes from these transcripts. Shortly thereafter, the jury returned with a guilty verdict on the two counts on which they had been "hung" which alleged the "disguising and concealing" of the "proceeds" of the hypothetical government escort service which was allegedly the unlawful activity (but for which no representation had been made). The jury missed completely the statutory "definitional connection" with the Travel Act violation necessary to convict my husband under the vague wording of the "sting" money laundering statute. They failed to understand that he was not charged with committing or participating in the alleged underlying offense for which no representation had been made. They failed to understand that a representation of a Travel Act violation had not been made, either, and that he was not charged with a violation of the Travel Act. They failed to understand the complex statutory tracking and that there was no underlying offense, or victim. Through the abuse of the "sting" money laundering statute, the government prosecutor had reduced the issue of my husband's guilt on whether a representation had been made that the proceeds were from an escort service, even if that service was hypothetical. Such representation indeed had been made and my husband (believing there was nothing unlawful about an escort service since dozens operate legally in Hawaii) had agreed at the first meeting with the undercover agent to process through his merchant account, as a personal favor, a few hundred dollars of credit card slips. This was the "predisposition" established through the scenario of the "sting" to nullify the jury's consideration of my husband's entrapment defense. However, it is important to note that the jury found my husband not guilty of any "substantive" counts of "laundering monetary instruments" or of promoting any unlawful underlying activity. Obviously the jury did not believe that my husband was motivated by profit.

In summary, the alleged "proceeds" (allegedly the monetary instruments that were "laundered") were never represented to my husband as being from an actual unlawful activity as due process of the statute requires. **Hearsay testimony was admitted as evidence that "all escort services are fronts for prostitution"** and therefore that satisfied the representation requirement of the statute. Such misrepresentation is the pattern of the abuse of 18 U.S. Code, Section 1956 (a)(3). The U.S. Sentencing Commission's internal report on the need for amendments related to mandatory sentencing guidelines suggests that 68% of those convicted under this statute did not really know or believe the proceeds to be from a "specified unlawful

activity". More often than not, there is no clear representation by the undercover agent that the proceeds are indeed those of an "unlawful activity", or even a hint of "some form of unlawful activity" to satisfy the statute's due process requirement. It was certainly true in my husband's case. There was never a representation made and no due process was followed by the prosecutor in staging and directing a "sting" involving a few hundred dollars of credit card slips from the alleged escort service. The "proceeds", monetary instruments he allegedly "laundered", were never represented even circumstantially to be from prostitution. Ironically, even presently, dozens of escort services openly advertise in the Yellow Pages acceptance of credit cards and are issued merchant accounts by the banks. If indeed "all escort services are fronts for prostitution" why is it that neither the banks nor the escort services were ever prosecuted for "laundering monetary instruments", which is something they do on a daily, routine basis and in large amounts. No effort was ever made by the credit card companies to stop issuance of merchant accounts to escort service business, or to prevent the advertising of credit card acceptance or the Yellow Pages' display of credit card logos. The Yellow Pages, the telephone companies, and the State and Federal government receive escort service "proceeds" in the form of fees or taxes. Ironically, American Express Company, the company that provided the government with credit cards of fictitious card holders to help the government prosecutor fabricate the sting against my husband, was fined recently \$50 million by the government for actual laundering of Colombian drug money. In this case and in many other cases, there were no criminal indictments for such actual, hard-core, illegal money laundering, on-going activity. This and other cases have been settled as civil cases through the imposition of fines. Obviously a double prosecutorial standard exists on how the money laundering laws are applied. My husband's prosecution was downright hypocritical, selective and prejudicial. His conviction was improperly obtained through the abuse and misapplication of Title 18, U.S. Code, Section 1956 (a)(3), a statute which has become an instrument of oppression. **The cost of his prosecution to the American taxpayers has been enormous (over \$2 million) and unjustifiable.** My husband's 41-month sentencing is ludicrous and hypocritical. His life, health and reputation have been ruined. He was forced to spend all his life's savings and retirement funds on defending himself for these frivolous charges. His job was taken away and he was left penniless and in extremely poor health.

### **Conclusions**

**18 U.S. Code, Section 1956 (a)(3) is a statute which prearranges a "crime" and its evidence with guaranteed conviction and level of sentencing. It has become an instrument of oppression. It produces sentences so anomalous that it undermines the very uniformity that Congress sought to achieve when it adopted sentencing guidelines. Congress should amend the statute and provide guidelines for its proper constitutional application. Congress needs to ratify the U.S. Sentencing Commission's proposed sentencing guidelines on laundering monetary instruments.**

18 U.S. Code, Section 1956 (a)(3) clearly violates the Eighth Amendment, because it imposes excessive bail, excessive fines, and cruel and unusual punishment often totally out of proportion to the underlying offenses. It produces sentences so anomalous that it undermines the very uniformity that Congress sought to achieve when it adopted sentencing guidelines. For each count it provides for \$250,000 in fines and up to 20 years imprisonment; the same as a major drug trafficking violation, even if the alleged, misrepresented, underlying offense of the "sting" is only a petty misdemeanor. Often the alleged unlawful activity does not fall within the predicate offenses of section (7) of the law to qualify as a money laundering offense. A nebulous and circuitous statutory tracking is often used by prosecutors to bring the alleged offense within the ambit of money laundering offenses with considerable, unusual and cruel escalation of the offense level. Clearly, this was not the Congressional intent.

Often, 18 U.S. Code, Section 1956 (a)(3) has been misapplied and abused to target individuals for a variety of misrepresented minor offenses which do not fall within the ambit of offenses for which the law was intended by Congress. As it was pointed out by Mr. Blau at the Commission's hearing, the only reason for passing the money laundering laws, was to get at professional money launderers, principally those associated with narcotics and organized crime. Furthermore, that the "sting" statute is too overboard and that the Department of Justice did not exercise some central control over its use. As a result, "ninety-four different interpretations of this statute exist presently throughout the country and each U.S. Attorney decides how this statute will be used or abused". Mr. Pauley, a Department of Justice official and ex-officio member of the Commission mentioned at the hearing that the Department of Justice is planning to decriminalize certain money laundering offenses, particularly for non-drug related minor offenses. However, the Department of Justice has not acted on these promises. Neither Congress nor the Department of Justice have provided guidelines for the statute's proper application. Guidelines for proper implementation are needed.

At the Commission's hearing, concerns were expressed of the need for changes of the money laundering laws, particularly of the "sting" statute. They warned that "the criminal justice process is being subverted and undermined by the use of a very easily proven criminal statute which is not connected in any way, shape or form with any organized crime activity or with organized drug activity", as Congress intended. They questioned the existing sentencing guidelines and endorsed the need of correlating the money laundering offense level to that of the underlying conduct. Finally, they looked to the courts as the guardians of fairness and proportion in sentencing by stating that the Courts "will reach a position where they will not forever tolerate these charging abuses". Unfortunately the courts have been reluctant to deviate from the constraints of the present sentencing guidelines.

In conclusion, the U.S. Sentencing Commission's Charter mandates evaluation of the effects of the sentencing guidelines on the criminal justice system by providing advice to Congress regarding the modification or enactment of statutes relating to criminal law and sentencing matters. Furthermore, the sentencing guidelines proposed by the Commission are designed to further the purposes of just punishment, and provide fundamental fairness in meeting the purposes of sentencing by avoiding unwarranted disparities as related to the criminal justice process. I wish to reiterate that 18 U.S. Code, Section 1956 (a)(3) produces sentences so anomalous that it undermines the very uniformity that Congress sought to achieve when it adopted sentencing guidelines. The U.S. Sentencing Commission has the responsibility to call immediate Congressional attention to the urgent need for ratification of the proposed sentencing amendments (Amendment no 20 in particular) and for reevaluation of the money laundering laws, particularly of the "sting" money laundering statute (18 U.S. Code, Section 1956 (a)(3)). This statute needs to be amended by appropriate Congressional Committees as its abuse has resulted in unwarranted convictions and in intolerable prosecutorial excesses and conduct. It has become an instrument of oppression. Most convictions have been obtained through abuse of this statute and through coercion in plea bargaining made possible by the threat of the guaranteed high and disproportionate sentencing.

Thank you for your consideration and action on these very important concerns.

Sincerely,



Carol Carayannis

Association of Americans for Constitutional Laws and Justice (AACLJ)

cc:

Commissioner Michael S. Gelacak, U.S. Sentencing Commission  
Judge A. David Mazzone,

|                                     |   |
|-------------------------------------|---|
| Commissioner Wayne A. Budd,         | " |
| Judge Julie E. Carnes,              | " |
| Commissioner Michael Goldsmith,     | " |
| Judge Deanell R. Tacha,             | " |
| Commissioner Edward F. Reilly, Jr., | " |
| Commissioner Jo Ann Harris          | " |

Ms. Phyllis J. Newton, Staff Director, U.S. Sentencing Commission  
 Mr. Michael Courlander, Public Information Specialist, "

**MONEY LAUNDERING WORKING GROUP OF U.S. SENTENCING COMMISSION**

Win Swenson, Chair

Rusty Burress

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Nolan Clark

Debora Dealy-Browning

Mary McDowell

Pam Rigby

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Members of Senate Banking Committee

Hon. Henry Hyde, Chairman, House Judiciary Committee

Members of House Judiciary Committee

Hon. Jim Leach, Chairman, House Banking Committee

Members of House Banking Committee

Hon. Dan Inouye, Senator, Hawaii

Hon. Dan Akaka, "

Hon. Neil Abercrombie, Rep., Hawaii

Hon. Patsy T. Mink, Rep. Hawaii

**PARTICIPANTS WHO TESTIFIED on Money Laundering Sentencing Guidelines / Public hearing on proposed Guideline Amendments of the U.S.SENTENCING COMMISSION, (Monday March 22, 1993, Ceremonial Courtroom, Federal Courthouse, 2nd & Constitution Ave. N.W. Washington DC)**

Mr. Charles W. Blau (former Associate Attorney General, Department of Justice)

Mr. Stephen R. LaCheen, Pennsylvania Association of Criminal Lawyers

Mr. James M. Becker, Criminal law Committee of the Federal Bar Association

Mr. Chuck Morley (EX Criminal Investigation Division of the IRS; EX Chief investigator of the U.S. Senate Subcommittee on Investigations)

Mr. David Stewart, Law firm of Ropes and Gray

Mr. Paul B. Bergman, New York Council of Defense Lawyers

American Civil Liberties Union

AHEPA

Mr. Jim McGee, The Washington Post

New York Times

Ms. Jill Smolowe, Time- Life Magazine

Ms Elaine Lafferty, "

Ms. Andrea Sachs, "

ASSOCIATION OF AMERICANS  
FOR CONSTITUTIONAL LAWS AND JUSTICE (AACLJ)

(A Free Association of Americans seeking community, legislative, and judicial assistance and support in preserving and restoring constitutional laws and Justice in America.)

**MANDATE: RESTORING CONSTITUTIONAL LAW AND JUSTICE IN AMERICA**

**PLAN OF ACTION**

Unconstitutional laws, or laws used unconstitutionally, have no place in a great, free, and democratic country such as ours that advocates and supports human and civil rights. Our Constitution is still the supreme law of the land. Improperly used laws can undermine the legal process to become an instrument of repression. If we allow laws to be used unconstitutionally, without even protesting, it is only a question of time before our basic civil rights and liberties are forever lost. Loss of freedom can become an insidious progression.

We, as Americans, cannot seat placidly by as our neighbors are wrongfully seized and their property is confiscated. We cannot simply capitulate to improperly used laws that dilute our right to be secure in our homes against unlawful searches and secure in the courts against nebulous, new unconstitutionally used laws and unlawfully fabricated evidence. Our sacred rights are not the "loopholes" by which our enemies, the murderers and rapists and thieves, and drug dealers, allegedly escape. Our juries can be responsible and trusted and should not be manipulated. Our legal system should protect us and uphold our civil rights. Finally, we cannot forget the lessons of history, that when the rights of our "enemies" have been wrestled from them, then our rights have been lost as well, for the same rights serve both citizen and "criminal".

All of our laws need to be adjudged constitutionally accurate in their intent and language so as to adhere strictly and hold true to the Rules and Principles of the Constitution of the United States of America and its Bill of Rights and subsequent Amendments. We, The People, and our Congressional representatives need to be vigilant of abuses and injustices of improperly applied laws. Only through civil responsibility, vigilance, and determination, we can restore a higher degree of fidelity to the American Criminal Justice System and to our country's Founding Principles.

**AN ISSUE FOR IMMEDIATE ACTION**

**Title 18, U.S. Code, Section 1956 (a)(3), The Money Laundering "Sting" Statute is an unconstitutional law that needs to be amended or repealed.**

Title 18, U.S. Code, Section 1956 (a)(3), the Money Laundering "sting" statute has been selected and targeted as the best example of a "new law" that has become an outmost instrument of oppression and repression in our country. It is an unconstitutional law that needs to be repealed or drastically amended.

The statute, when abused, as it has been well-documented in many cases around the country, "prearranges the 'crime' and its evidence with guaranteed conviction and level of sentencing" Such abuse of the law is clearly unconstitutional and undermines the integrity of the judicial process. Our Congress needs to provide guidelines for the proper and ethical use of this money laundering law so that there can be some measure of balance and fundamental fairness in its intended restricted application against organized crime and drug traffickers.

Title 18 U.S. Code, Section 1956 (a)(3), hereafter referred as the STING STATUTE, was enacted on November 18, 1988 as part of the Money Laundering Amendment Act and as a component of anti-drug legislation. However, the statute has been misinterpreted and applied frequently, selectively, improperly, prejudicially and unconstitutionally by federal prosecutors to target and convict individuals, through outrageous conduct, unethical deceptions, and abuse of the judicial process and of the federal criminal justice system. It has resulted in a terrible waste of government resources and taxpayer's money. Furthermore, the statute has been grossly misapplied and abused to target and convict individuals for a variety of misrepresented hypothetical minor offenses which do not fall within the ambit of offenses for which the law was intended by Congress.

When improperly used, the STING STATUTE violates the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of our Constitution by permitting the orchestration of a "crime" and its evidence thus guaranteeing conviction and a very high level of sentencing, obtained through a predetermined and unavoidable low threshold of proof. Abuses of the STING

STATUTE have been attested and documented by numerous sources, testimonies, newspaper and magazine articles, government records of public hearings, improper prosecutions documented by caselaw, and even by the U.S. Sentencing Commission's internal and independent finding; the latter suggesting that due process was not followed in the application of the STING STATUTE and that as many as 68% of the persons that have been convicted may be due to misrepresentations by law enforcement officials.

In brief, there has been unprecedented abuse of the STING STATUTE of the money laundering laws: the STING STATUTE does not provide the constitutional safeguards and it is a law which has become an instrument of oppression. Its continuing misapplication by federal prosecutors is subverting and undermining our Criminal Justice System.

Congress needs to repeal or amend drastically 18 U.S. Code, Section 1956 (a)(3), the STING STATUTE of the Money Laundering laws and to provide proper guidelines that guarantee Constitutional safeguards. Congress needs to review and adopt the amendments to the sentencing guidelines proposed by the U.S. Sentencing Commission for convictions obtained through the abuse of the STING STATUTE.

#### **Criticism of the "Sting" Money Laundering Statute**

(U.S. Sentencing Commission's Public Hearing on Proposed Sentencing Guideline Amendments, March 22, 1993, Washington DC)

The U.S. Sentencing Commission generated an internal report proposing amendments to its own sentencing guidelines for money laundering offenses. Specifically for offenses prosecuted under the "sting" money laundering statute, the Commission's proposed amendments would tie the sentencing level to that of the underlying "sting" offense, when properly represented. There was an overwhelming support for these amendments by the Chairman of the U.S. Sentencing Commission, and all of the Commissioners and staff, as well as from those who testified at the public hearings. The judiciary committees of the 103rd Congress did not get around to reviewing or acting on the Commission's proposed sentencing amendments.

The following are a few examples of comments made at the Sentencing Commission's hearing (Public Hearing on Proposed Sentencing Guideline Amendments, March 22, 1993) regarding abuses and inequities of the money laundering laws, particularly the "sting" statute. One of the people that testified at the public hearing in Washington D.C. was the principal author of the money laundering statutes, Mr. Charles W. Blau, (Transcripts of the hearing p.256-261). Commenting on the abuse of the money laundering "sting" statute, he stated: "It is a bit like using a nuclear weapon against a single individual". Mr. Charles W. Blau is presently in private practice, but has worked for the Department of Justice in different capacities, including Chief of Narcotics, Associate Deputy Attorney General and Associate Attorney General. He played an active role in drafting the money laundering statutes and the memorandum of understanding between the various law enforcement agencies in using these statutes. He is now extremely critical of the abuse of the laws that he helped draft. At the hearing he stated:

*"In looking at these statutes, I think basically the intent, or at least my intent, was to create a broad criminal statute which would reach every kind of sophisticated money laundering that was out there. In short, I thought, and I think basically the people that were in the process with me felt, that the real intent of this statute was to get at professional money launderers, principally those associated with narcotics and organized crime.*

*In retrospect, I think there are probably two mistakes that we made....I think I would have liked to have limited this statute to instances where there was sophisticated criminal activity present, either with narcotics or with organized crime.*

*Secondly, I think I would have required the Department (Justice) to have exercised some central control over the use of this statute much more so than we did. The Department, in my view, basically has failed to have what I would call a realistic or a centralized process dealing with the use of this statute. There are, in essence, 94 separate policies, and each U.S. Attorney, basically, in essence, decides how the statute is going to be abused or used, as the case may be.*

*What we are seeing at least in my part of the country, which is Texas and the Southwest, is a continual threatening of the use of the money laundering statute in non-drug and non-organized crime cases."*

On page 259 of the Sentencing Commission's Hearing proceedings, Mr. Blau continues:

"My view, however, I think is that this statute is a very, very important powerful prosecution tool. I think that it has tremendous potential to be abused. I think in at least my area of the country, and particularly in the white collar non-drug area, we are seeing an abuse of the use of this statute. Plea negotiations, in short, have been replaced by threat negotiations, and using a very substantial and heavy-wielding club, the money laundering statute. This is a real threat. One may argue that it is either good plea bargaining on the part of the government or, alternatively, it is a little bit overzealous and coercive of the criminal justice process.

The question that I raise with the use of this statute, without any centralized controls, is whether the criminal justice process is being undermined by the use of a very easily proven criminal statute which is not connected in any way, shape or form with any organized crime activity or with organized drug activity. And the question with these guidelines has been, should a person be subjected to severe criminal sanctions, when his conduct amounts to no more than the base underlying offense. It is a bit like using a nuclear weapon against a single individual.

I think these changes proposed by the Commission are essential in bringing a little reality back into the prosecution charging process. I would have preferred that the department basically would have taken this on itself, would have overseen basically the use of this statute and would have culled out the cases where it was clearly an abuse of process to bring such an enormous charge against underlying conduct which did not deserve it.

My view of these guidelines, until basically Congress gets around to amending the statute, is that the underlying offense should be relevant and important factor in determining what penalties for money laundering connected with those type of offenses are.

I do believe that the courts are going to I think reach a position where they will not forever tolerate these charging abuses, and a very valuable prosecution tool will be unnecessarily limited, or bad case law. So I support your amendments completely."

Mr. Stephen R. LaCheen, representing the Pennsylvania Association of Criminal Lawyers, in his endorsement of the Commission's guideline amendments commented (page 75):

"We also comment favorably on your money-laundering amendments, as well as the amendments regarding sting operations, and there both, again, informed out of the concern to avoid manipulation of the guidelines in the plea-bargaining process, which in vast majority of cases, as you know, are resolved in plea negotiations."

Mr. James M. Becker, representing the Criminal law Committee of the Federal Bar Association, commented as follows (p. 157):

".....Our group has identified several instances in the Eastern District of Pennsylvania, and we think they exist nationwide, where the mere addition of that money laundering charge, especially under 18 U.S.C. sections 1956 and 1957, artificially raises the guideline level beyond that of the underlying offense, when there is no real money laundering activity that somehow makes the person's conduct more culpable than if they were just charged with a fraud offense, so for that reason, we applaud the proposed Amendment No. 20, heartily endorse it."

Mr. Chuck Morley, an expert on the subject of money laundering and currency reporting laws under the Bank Secrecy Act, having served with the Criminal Investigation Division of the IRS and as Chief investigator of the U.S. Senate Subcommittee on Investigations, stated (p. 224):

".....I come here today to urge you to approve the money laundering and the structuring guidelines as proposed by the committee staff." ".....the revised guidelines reflect greater sensitivity to such factors as sophistications of money laundering conduct." ".....the staff (Sentencing Commission) found that, historically, prosecutors have been stretching these guidelines significantly...."

"Offenses that technically qualify as money laundering are frequently simply incidental to or component parts of the underlying crime. This has given rise to extensive disproportionate sentencing.....The sentencing report indicated that 68 percent of the defendants convicted of structuring either didn't know or did not

*believe the funds were illegal. ....Yet, these people could still get the same type of sentence as a major money launderer, somebody involved in a huge smurfing operation. So do the guidelines work? I don't think they work, unless what we are trying to do is fill the jails up....." The Justice Department has said to me informally that we are trying to decriminalize money laundering or that we are trying to greatly lessen the offense of money laundering....." ".....To continue under the current guidelines is to ignore the realities of money laundering totally, while continuing to mete out disproportionate and unfair sentences to both drug and non-drug defendants."*

Mr. David Stewart of the law firm of Ropes and Gray, commented:

*The basic principle announced by the Commission, which I strongly endorse, is an attempt to tie the base offense levels for this offense (money laundering) more closely to the underlying conduct that was the source of the illegal proceeds.....in non-drug offenses you really do get an extraordinary increase in the penalty by including the money laundering charge. ....I would even report that prosecutors confirm that is why they add money laundering counts, because the guidelines are so powerful with them. It is a bigger hammer. One case I saw that was 27 months in prison versus 6 months in prison.....Finally, I would note my agreement with the observation to the American Bar Association on the subject of stings, again, the concept of the money laundering offense to the underlying offense seems to me very important in that context, as well. It is a little trickier, of course, because there is no true underlying offense, so it has to be the represented underlying offense, but, again, it seems to me the proper ways to approach the problem."*

Mr. Paul B. Bergman, representing the New York Council of Defense Lawyers, had the following comments:

*"I think that this proposed amendment on the guidelines for money laundering goes one way towards eliminating what we consider to be unfair leverage and sometimes abusively exercised leverage with money laundering."*

What is interesting from the above statements and other criticism, and what the Sentencing Commission's own report suggests, is that the money "sting" laundering statute has been abused. Two of the people who testified at the Sentencing Commission hearings had been with the Justice Department and had been responsible for the drafting of the money laundering statutes. The same people now indicate that their real intent, was to get at professional money launderers, principally those associated with narcotics and organized crime. The principal author of the money laundering statutes, Mr. Blau, admits that the Department of Justice made two mistakes in making the "sting" statute too overboard and not limiting it to sophisticated criminal activity present, either with narcotics or with organized crime. Furthermore, that the Department of Justice did not exercise some central control over the use of this statute and that 94 separate policies exist, with each U.S. Attorney's Office, often misapplying and clearly abusing the statute.

Concerns have been expressed by the Sentencing Commission members and the supporters of proposed sentencing guideline amendments and of the changes of the money laundering laws, that the criminal justice process is being undermined by the use of a very easily proven criminal statute which "is not connected in any way, shape or form with any organized crime activity or with organized drug activity", as Congress intended. They question the existing sentencing guidelines and they endorse the need of correlating the money laundering offense level to that of the underlying conduct. Finally, they look to the courts as the guardians of fairness and proportion in sentencing by stating that the Courts will "reach a position where they will not forever tolerate these charging abuses" (by federal prosecutors).

#### **IMMEDIATE OBJECTIVES FOR ACTION:**

The abuses of the "sting" statute of the money laundering laws should be stopped. They have resulted in the subversion of the criminal justice system, in unfair convictions, and in gross waste of taxpayer's money. Congress needs to review and revise, not only the sentencing guidelines on non-drug related money laundering offenses, but the statutes themselves. The Department of Justice should be required to exercise better control to prevent abuses of the "sting" statute by overzealous prosecutors. Congress has an obligation to change this unconstitutional law, or at least provide proper guidelines of due process, in its implementation. In its present form, this unfair, unconstitutional law is undermining our criminal justice system and is responsible for improper convictions and unprecedented prosecutorial misconduct that has no place in a democratic society.

AACLJ has identified two immediate objectives for community support and for Congressional action :

1. The money laundering "sting" statute (18 U.S. Code, Section 1956 (a)(3)), needs to be repealed or at least amended by Congress.
2. The U.S. Sentencing Commission's Proposed Amendments to the Sentencing Guidelines need to be adopted, particularly those pertaining to money laundering offenses and more specifically to non-drug related offenses prosecuted by the "sting" money laundering statute.

#### **JUSTIFICATION OF OBJECTIVES:**

**THE STATUTE:** Congress needs to reevaluate the language of the statute and provide proper guidelines for its use. "Ninety-four different interpretations of this statute exist presently throughout the country and each U.S. Attorney decides on his or her own how this statute will be used or abused". Neither Congress nor the Department of Justice have provided guidelines for the statute's proper application. The U.S. Sentencing Commission's internal report on the need for amendments related to mandatory sentencing guidelines suggests that 68% of those convicted under this statute did not really know or believe the proceeds to be from a "specified unlawful activity". This is because no clear representation was made and no due process of the law was followed. It means that perhaps as many as 68% of the people that have been convicted may be innocent; people serving long prison sentences through coercive plea bargaining and because of prosecutorial abuse of this "sting" statute of the money laundering laws. The statute has an extremely low threshold of proof, provides for a disproportionate sentencing level, and it has been grossly abused by overzealous prosecutors. It is unconstitutional, because it violates the Fourth, Fifth, Eighth, and Fourteenth Amendments. The statute's low threshold of proof, makes it easy for government prosecutors to engage in outrageous behavior, to fabricate crimes and evidence, and almost automatically obtain indictments and convictions by prearranging a "crime", the evidence, conviction and extremely high level of sentencing.

The "sting" statute violates the Due Process and the equal protection provisions of the Fourteenth Amendment in that, more often than not, there is no clear representation by the undercover agent that the proceeds are indeed those of an "unlawful activity", but of "some form of unlawful activity" without ever disclosing what is the activity. It violates the Fourteenth Amendment because of the low threshold of proof in the form of the key words "any representation". There are more nebulous definitions that are vague and subject to deliberate prosecutorial misinterpretations.

**THE SENTENCING:** Amendments proposed by the U.S. Sentencing Commission pertaining to money laundering offenses received overwhelming support at a public hearing. The U.S. Sentencing Commission's prepared its own favorable internal report recommending changes. Congressional committees failed to consider the proposed amendments in 1993 or in 1994. Congressional attention should be called to the need for ratification of these amendments.

The statute clearly violates the Eighth Amendment, because it imposes excessive bail, excessive fines, and cruel and unusual punishment totally out of proportion to the underlying offenses. For each count it provides for \$250,000 in fines and up to 20 years imprisonment; the same as a major drug trafficking violation, even if the alleged, misrepresented, underlying offense of the "sting" is only a petty misdemeanor. Often the alleged unlawful activity does not fall within the predicate offenses of section (7) of the law to qualify as a money laundering offense. A circuitous statutory tracking is often required to bring the alleged offense within the ambit of money laundering offenses with considerable, unusual and cruel escalation of the offense level.

#### **NEEDED ACTION AND SUPPORT**

**AACLJ asks Patriotic Americans and groups sharing the common goal of preserving and restoring constitutional laws and justice in America to assist and support this initial effort to have this most outrageous law, the Money Laundering "sting" statute, 18 U.S. Code, Section 1956 (a)(3) repealed or amended by writing to the chairmen and members of the Congressional Banking and Judiciary committees, to their elected representatives in Congress and to the U.S. Sentencing Commission. The statute needs to be repealed or drastically modified and amended.**

Guidelines should be provided by Congress and the Department of Justice on how targets should be selected for deceptive government investigations using 18 U.S. Code, Section 1956 (a)(3); on how government confidential informants should be qualified, screened and monitored; on what is the effect of the Fifth Amendment's injunction against self-incrimination; on how to safeguard against abuses by overzealous prosecutors and law enforcement officers seeking convictions by any

means; on how outrageous government invasion of privacy can be rationalized, on what are appropriate sentencing levels when the underlying offense is nothing more than a petty misdemeanor; finally on what the due process requirement of "representation" should be.

Please sign and return the accompanying "Petition to Repeal" which clearly outlines the unconstitutionality of the "Sting" money laundering statute. Please circulate this notice, write and send copies of the attached petition to your elected officials in the 104th Congress bringing to their attention the abuse of this law and urging them to act on our common goals and objectives. BY SO DOING, YOU WILL BE UPHOLDING OUR CONSTITUTION, AND YOU WILL HELP PRESERVE OUR CIVIL RIGHTS, OUR BASIC CONSTITUTIONAL FREEDOMS, AND THE INTEGRITY OF OUR CRIMINAL JUSTICE SYSTEM.

## PETITION TO REPEAL 18 U.S. Code, Section 1956 (a)(3)

"Issuing A Petition calling for the REPEAL of 18 U.S. Code. Section 1956 (a)(3), the "Sting" Money Laundering Statute which, in its present form, is an Unconstitutional Law;

### CONSTITUTIONAL BASIS

WHEREAS, our Founding Fathers in 1787 adopted a Constitution at our First Congress and subsequent Congresses supplemented it with Constitutional Amendments or what is known as The Bill of Rights and the Reconstruction Amendments and, most importantly, the 14th Amendment with its due process and equal protection clauses; and

WHEREAS, our Constitution, the Bill of Rights and subsequent amendments, are the Supreme Law of the Land, and all individual rights and liberties are guaranteed therein, within the Bill of Rights and by the 14th Amendment; and

WHEREAS, all laws must mesh both democratic values and the need for public order and integrity in government and, most importantly, honor the rights guaranteed citizens under the Constitution; and

WHEREAS, if a law is ratified by Congress in good faith but its enforcement and prosecution is intentionally misinterpreted, applied selectively, improperly, prejudicially and unconstitutionally, abolishing liberties guaranteed by the Bill of Rights and violating the Due Process of the Fourteenth Amendment and UPON THIS HAPPENING this law to be hereby declared to be in violation of the Constitution of the United States, and subject to Congressional review and REPEAL; and,

### THE UNCONSTITUTIONAL "STING" STATUTE OF MONEY LAUNDERING LAWS - CONGRESSIONAL RECORD

WHEREAS, 18 U.S. Code, Section 1956 (a)(3), the "sting" money laundering statute hereafter referred as the STING STATUTE), enacted on November 18, 1988 as part of the Money Laundering Amendment Act, is such a law requiring review and repeal because, frequently, it is misinterpreted and applied selectively, improperly, and prejudicially by federal prosecutors to target and convict citizens, through outrageous government conduct, unethical deceptions, abuse of the judicial process, and violations of Constitutional rights and principles, and

WHEREAS, the record shows that this STING STATUTE has been consistently, systematically and improperly applied and implemented, in violation of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of our Constitution by permitting the improper fabrication of evidence and orchestration of a "crime" with guaranteed conviction and level of sentencing, obtained through a prearranged, low threshold of proof, and

### STING STATUTE'S VAGUE LANGUAGE and DEFINITIONS

WHEREAS, the STING STATUTE makes such improper prosecution possible through vague, confusing and generic language and definitions which do not meet the simple language requirement of the law or sufficiently and clearly informing targeted persons of the charges against them; and

WHEREAS, the definitions and due process requirements that hold true for other laws, are not applied in the implementation of this STING STATUTE by federal prosecutors guiding, directing and supervising "sting" operations against targeted individuals; and

WHEREAS, the vague language of the STING STATUTE downgrades the threshold of proof necessary for convictions with such definitions of terms as "represented" substituted with "any representation", and "specified unlawful activity" substituted with "some form of specified unlawful activity", further substituted and downgraded with "though not necessarily what form of specified unlawful activity"; and

WHEREAS, the "specified unlawful activity" or "some form of specified unlawful activity" , though not necessarily what form of specified unlawful activity, covers a wide range and an unimaginable variety of hypothetically committed offenses, including any of the offenses in section 1961 (1) (RICO violations) and subviolations under this section, encompassing in turn a variety of other offenses, some of which may be even State misdemeanors, "represented" vaguely and circumstantially by undercover officers through "any representation" but only for definitional purposes in the structuring of a "sting" and thus making it possible to obtain a guaranteed guilty conviction through such confusing, circuitous, statutory tracking and by the vague language of the STING STATUTE; and

WHEREAS, these misrepresented "sting" subviolations used in the statutory tracking require a substantive rather than a hypothetical federal or State offense, prosecutors do not charge defendants with these offenses but use the vague "representation" or "any representation", including a circumstantial omission of further inquiry by a targeted person, to establish "willful neglect" or a "blind eye" as a substitute for their failure to follow the Due Process requirement of the law, and to claim hypothetical underlying offenses which are used for definitional purposes in structuring "stings" and only for the purpose of indicting and prosecuting for money laundering under the STING STATUTE, and independently of the nature or offense level of these hypothetical, underlying offense; and

#### **LACK OF CONGRESSIONAL GUIDELINES IN THE APPLICATION OF THE STING STATUTE**

WHEREAS, without proper Congressional or Department of Justice guidelines on the STING STATUTE's proper application, its vagueness has been often misinterpreted, exploited and abused by law enforcement agents and federal prosecutors to engage in outrageous conduct in order to obtain easy convictions of improperly targeted individuals by avoiding conformance to the due process requirements of the Fifth and Fourteenth Amendment of the Constitution; and

WHEREAS, no other Guidelines have been provided by Congress or the Department of Justice on how targets for such deceptive investigations should be selected; on how government confidential informants should be qualified, screened and monitored; on what is the effect of the Fifth Amendment's injunction against self-incrimination; on how to safeguard against abuses by overzealous prosecutors and law enforcement officers seeking convictions by any means; or on how outrageous government invasion of privacy can be rationalized, or what are appropriate sentencing levels when the underlying offense is nothing more than a petty misdemeanor artificially and enormously escalated to a money laundering offense level through abuse of the STING STATUTE; and

#### **STING STATUTE'S MISAPPLICATION AND ABUSE**

WHEREAS, no uniformity in the application of this law exists and Ninety-four different interpretations of this STING STATUTE exist presently throughout the country and each U.S. Attorney decides on his or her own how this STING STATUTE will be used or abused; and

WHEREAS, the STING STATUTE has been grossly misapplied and abused to target individuals for a variety of misrepresented minor offenses which do not fall within the ambit of offenses for which the law was intended by Congress; and

WHEREAS, this misapplication of the STING STATUTE has resulted in unprecedented misconduct, abuse of power, abuse of the federal criminal justice system, waste of government resources, taxpayer's money and wrongful convictions; and

WHEREAS, the continuous abuse of the STING STATUTE for frivolous, unnecessary prosecutions diverts valuable government resources from fighting real crime; and

WHEREAS, the STING STATUTE has already been used to violate fundamental constitutional rights of United States citizens; and

#### **STING STATUTE'S CRUEL AND UNUSUAL PENALTIES**

WHEREAS, the STING STATUTE provides for severe, disproportionate and artificially escalated sentencing levels and penalties and seizures even when the underlying "represented unlawful activity" is minor; and

WHEREAS, most convictions are obtained through coercive plea bargaining effected by prosecutors through the use and threat of the high sentencing levels under this STING STATUTE; and

WHEREAS, the U.S. Sentencing Commission's internal report on the need for amendments related to mandatory sentencing guidelines suggests that 68% of those convicted under this STING STATUTE did not really know or believe the proceeds to be from a "specified unlawful activity", which is a frightening statistic, clearly suggestive of due process violations and possible wrongful convictions; and

#### **STING STATUTE'S VIOLATIONS OF THE BILL OF RIGHTS AND OF THE 14TH CONSTITUTIONAL AMENDMENT**

WHEREAS, the STING STATUTE violates the Fourth Amendment's guarantee of the right of the people to be secure in their persons against unreasonable searches and although secret videotaping of persons in public places may be permitted, clandestine sound recording of private conversations is a form of unreasonable search protected by the Fourth Amendment; and

WHEREAS, the STING STATUTE violates the Fifth Amendment and due process against self-incrimination in that no warning is given to the targeted person and no Miranda rights are read that any statements made, or not made (labeled as willful neglect), will be used against this person for money laundering or any other type of collateral prosecution; and

WHEREAS, the STING STATUTE violates further the Fifth Amendment of Due Process and encourages outrageous government conduct in obtaining convictions; and

WHEREAS, the STING STATUTE violates the Sixth Amendment because its language is ambiguous and vague and in most "sting" money laundering cases an indicted person is not informed clearly in the indictment of the nature and cause of the accusation which often is not clear and does not correspond with an underlying offense which was properly represented; and

WHEREAS, the statutory tracking of the accusation in the STING STATUTE is often circuitous, nebulous, semantically vague and therefore not understood as it involves the targeted individual's alleged guilt for an extreme money laundering offense based, not on an actual violation of an underlying federal or state offense (often a misdemeanor), but for his alleged "intent" or "state of mind" in that he "believes" to participate or commit the misrepresented, hypothetical underlying offense which is used for definitional purposes only in the structuring of the money laundering "sting", and that the target's "intent" or "state of mind" (and therefore guilt for money laundering) can be circumstantially and subjectively established by the undercover officer's "representation" or "any representation" of "some form of unlawful activity, although not necessarily which form unlawful activity"; and

WHEREAS, alleged ongoing investigation of defendants for "other crimes" allegedly revealed to the undercover agent earlier during the "sting" and subsequent piecemeal or a series of superseding indictments are used often by prosecutors as the excuse to violate further a defendant's sixth Amendment right to speedy trial; and

WHEREAS, the STING STATUTE clearly violates the Eighth Amendment, because it imposes excessive bail, excessive fines, and cruel and unusual punishment totally out of proportion to the underlying offense which often may be minor; and

WHEREAS, the STING STATUTE provides for \$500,000 in fines and up to 20 years imprisonment, same as a major drug trafficking violation, even if the alleged, misrepresented, underlying offense of the "sting" is only a petty misdemeanor punishable ordinarily with a small fine if indeed it was committed; and

WHEREAS, prosecutors use the severity of the STING STATUTE's punishment or "other crimes" revealed during the "sting" to coerce and force most defendants to plead guilty to one or more counts of money laundering rather than risk longer imprisonment through the guaranteed conviction process made possible by the improper prosecutorial use of the STING STATUTE and its intentionally low threshold of proof; and

WHEREAS, if the alleged and misrepresented "unlawful activity" does not fall within the predicate offenses of section (7) of the STING STATUTE to qualify as a money laundering offense (i.e. drug related), the circuitous statutory tracking mentioned earlier is used to bring the alleged hypothetical offense of the "sting" within the ambit of money laundering offenses by charging a defendant not guilty of the misrepresented minor offense but guilty of his "intent" and of a circumstantially derived "state of mind" (guaranteed through the design of the scenario of the "sting"), in allegedly intending to commit the hypothetical lesser offense, with considerable, unusual and cruel escalation to the money laundering offense level in further violation of the Eighth Amendment; and

WHEREAS, the STING STATUTE violates the Due Process and the Equal Protection provisions of the Fourteenth Amendment in that, often, there is no clear representation by the undercover agent that the proceeds are indeed those of an "unlawful activity", but of "some form of unlawful activity" often without even remotely disclosing the nature of this "unlawful activity"; and

WHEREAS, the STING STATUTE violates further the Fourteenth Amendment because of the low threshold of proof in the form of the key words and phrases downgrading the term "represented" to "any representation", and the term "unlawful activity" downgraded to "some form of unlawful activity", which is further downgraded by the phrase "though necessarily which form of unlawful activity", and the terms "proceeds", "property" "concealing" "disguising", "promoting", "interstate commerce" to have a plethora of incomprehensible definitions and interpretations; and

WHEREAS, the financial transaction of a simple deposit in a financial institution such as a bank from "some form, though not necessarily which form of unlawful activity" of intentionally misrepresented "property" or "proceeds" (often of insignificant value) becomes the automatic and low threshold criterion and element of the money laundering "crime" thus guaranteeing conviction, through the abuse of the STING STATUTE, to an artificially escalated money laundering offense, in further violation of the Due Process requirement of the Fourteenth Amendment; and

WHEREAS, the STING STATUTE has an extremely low threshold of proof which makes it easy for government prosecutors to engage in outrageous behavior, to fabricate crimes and evidence, entrap individuals, mislead Grand Juries, and almost automatically obtain indictments and convictions of targeted citizens by nullifying their valid entrapment defense through the design of the "sting" scenario; and

#### **STING STATUTE'S ABUSE VIOLATES CONGRESSIONAL INTENT**

WHEREAS, Congress and its authors in the Department of Justice intended the STING STATUTE to be used against organized crime and criminals involved in money laundering activities and drug trafficking but the STING STATUTE has been used and abused by federal prosecutors to prosecute (i.e tax protestors, ethnic minorities, the politically incorrect) and primarily for purposes and in ways other than those intended by Congress.

#### **PETITION TO REPEAL THE STING STATUTE OF THE MONEY LAUNDERING LAWS**

IN CONCLUSION IT IS NOTED that the above abuses of the STING STATUTE have been attested and documented by numerous sources, testimonies, government records of public hearings (U.S. Sentencing Commission Hearings, March 22, 1993), improper prosecutions documented by caselaw, and by the U.S. Sentencing Commission's internal and independent finding suggesting that due process was not followed in the application of the STING STATUTE and that as many as 68% of the persons that have been convicted may be innocent people serving long prison sentences because of prosecutorial abuse of this STING STATUTE in the misrepresentation of the hypothetical "unlawful activity";

BE IT FURTHER NOTED that the STING STATUTE of the money laundering laws does not provide the constitutional safeguards and it is a law which has become an instrument of oppression and abuse because of the lack of proper guidelines in its application;

BE IT FURTHER NOTED that the continuing misapplication of the STING STATUTE by federal prosecutors is subverting and undermining our judicial system by the very same people who are supposed to protect it;

WE CONCLUDE that prosecutions under 18 U.S. Code, Section 1956 (a)(3), the money laundering STING STATUTE, have not been to the best interest of the citizenry of the United States of America and have been the source of abuse and prosecutorial misconduct and subversion of our Criminal Justice System;

WE ARE EXTREMELY CONCERNED THAT our judicial system is being subverted and undermined through unlawful prosecutions and abuse of this particular law but, also, WE ARE EXTREMELY CONCERNED that other greater issues and philosophies emerge that basic constitutional freedoms and guarantees are threatened in our country and that our democracy can rapidly degenerate into tyranny if such unconstitutional and unfair laws, as 18 U.S. Code, Section 1956 (a)(3), the money laundering STING STATUTE are allowed to stay in effect and be further abused;

WE FURTHER RESOLVE, that all laws, including 18 U.S. Code, Section 1956 (a)(3), the STING STATUTE, need to be adjudged constitutionally accurate in their intent and language so as to adhere strictly and hold true to the Rules and Principles of the Constitution of the United States of America and its Bill of Rights and subsequent Amendments;

THEREFORE, WE PETITION Congress to REPEAL 18 U.S. Code, Section 1956 (a)(3)), the money laundering STING STATUTE, as being a law which is unconstitutional, to review and amend all other money laundering laws and assigned sentencing guidelines, to ratify the amendments to the mandatory sentencing guidelines proposed by the U.S. sentencing Commission; and to be vigilant of further abuses and injustices of improperly applied laws, and for the additional benefit of engendering a higher degree of fidelity to the American Criminal Justice System and a re-awakening awareness to our country's Founding Principles.

RESPECTFULLY SUBMITTED

ASSOCIATION OF AMERICANS FOR CONSTITUTIONAL LAWS AND JUSTICE

[illegible]