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Attention: Public Information

February 22, 1996

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Commentary on: (a) The U.S. Sentencing Commission's Proposed Guidelines on Laundering Monetary Instruments; (b) The need for offense levels to comport with the seriousness of the defendant's offense conduct; (c) The consistency and appropriateness in the use of the money laundering statute (RE: P.L. 104-38); (d) The charging and plea practices of Federal prosecutors with respect to the offense of money laundering (RE: P.L. 104-38); (e) The Disparities in Sentencing for Money Laundering Offenses. (f) Conclusions and recommendations. (g) APPENDIX.

Dear Commissioners:

We are responding to the U.S. Sentencing Commission's request for public comment on proposed sentencing guidelines for money laundering offenses as announced in the Federal Register (Jan. 2, 1996, vol 61, No 1, pp 79-83) and, specifically, on pending alternative proposals or on some variation of them that appropriately addresses the goals of: (1) Assuring that offense levels comport with the seriousness of the defendant's offense conduct; and (2) avoiding unwarranted sentencing disparities as a result of charging practices.

Unequivocally, we support the U.S. Sentencing Commission's resubmission of its 1995 proposed guidelines, which were the result of a three year study, and reflect common sense. We recommend slight clarification of the due process requirement related to sentencing resulting from "sting" application of the money laundering statute, particularly as it relates to the representation of an "underlying unlawful activity", and the sentencing level of such underlying

activity which often cannot be determined or if a defendant had no part in it.

We oppose the Department of Justice alternative proposals as being excessive and unwarranted. We will qualify our statements further in our commentary. Also we are presenting commentary on P.L. 104-38 and on the extreme disparities of the sentencing guidelines which exist at the present time which, regrettably, this law has permitted to continue. Furthermore, we comment on the inconsistencies, inappropriateness and the lack of proper guidelines in the use of this statute, which has resulted in charging excesses, coercive tactics and outrageous plea practices by Federal prosecutors with respect to the offense of money laundering. Finally, we provide, in the body of this commentary and in the Appendix, specific examples of abuses of the due process requirement of the statute, of violations of the Fifth and Sixth Amendment of the Constitution, of sentencing disparities, some within the same Federal Judicial Circuit. Our commentary on these issues is not based on opinions or vague perceptions but on careful, documented research of facts, caselaw, literature review, testimony of experts, and the Commission's own reports and proceedings of public hearings.

The issues addressed in our commentary are obviously of concern to Congress since P.L. 104-38, included a directive for a report on "the charging and plea practices of Federal prosecutors with respect to the offense of money laundering", a report which must include "an account of the steps taken or to be taken by the Justice Department to ensure consistency and appropriateness in the use of the money laundering statute".

Since the Sentencing Commission has been charged with the responsibility of commenting on the study to be prepared by the Department of Justice, we sincerely hope that the documentation provided in the present commentary will be of some usefulness to the

Commission. Furthermore, we are prepared to provide additional documentation and references, as needed.

(a) The U.S. Sentencing Commission's Proposed Guidelines on Laundering Monetary Instruments.

We wholeheartedly support the Commission's proposed amendments to the sentencing guidelines. We believe that these amendments should not be compromised or changed as they have been promulgated by the Commission after a long and careful review. However, we recommend that a clarification be made, or a separate section be included, in the proposed amendments for offenses sentenced under 1956(a)(3), the "sting" provision of the money laundering statute. For such "sting" offenses where the money laundering activity is based on a government-staged, hypothetical, underlying unlawful activity, the amended sentencing guideline should include more specific language pertinent to the underlying offense which led to the sentencing for money laundering; specifically, that the Fifth Amendment, due process requirement of proper representation of the "underlying unlawful activity" was indeed met by the undercover government agents in a "sting" that resulted in a money laundering conviction; furthermore that the charging indictment issued by federal prosecutors which resulted in conviction and sentencing included the proper notification requirement of the Sixth Amendment in that the defendant was indeed accountable for the underlying offense in the indictment and that the specific State or Federal law were cited in supporting proper charges of the violation of the underlying unlawful activity along with money laundering charges.

Such clarification to the sentencing guidelines would serve the additional purpose of limiting excesses and overzealousness by government attorneys in charging improperly defendants with money laundering counts in government-staged "stings". It would make it harder for federal prosecutors to circumvent the Fifth amendment requirement of proper representation of the underlying unlawful

activity or to interpret improperly the statute that "some form of unlawful activity" means that such activity does not have to be represented in a "sting" but that representation can be peripherally and indirectly established through "circumstantial" evidence of their own fabrication. It would alleviate the use of the underlying unlawful activity as being simply "definitional" in escalating any alleged offense or financial transaction to a money laundering offense, with guaranteed conviction and inappropriate high sentencing level. Finally, it would require federal prosecutors to charge a defendant properly for money laundering in an indictment by citing the specific federal or state statute that applies to the underlying unlawful activity and whether the defendant (not a government entity staging a "sting") has or could have violated the underlying unlawful activity. Without an actual or even hypothetical violation of a specific underlying unlawful activity, which must be a felony under State or Federal law, there should be no money laundering offense.

Such provisions in the amended sentencing guidelines (and hopefully in the money laundering statute) would restrict federal prosecutors from abusing the statute and its high sentencing levels in "sting" prosecutions where the only evidence of a defendant's "guilt" is the one fabricated by government attorneys. It would require federal prosecutors to prove at trial to a jury the elements of the underlying offense as a prerequisite of a money laundering conviction and not mislead juries that the underlying offense can be merely "definitional".

Thus, for 1956(a)(3) sentencing we propose the following changes to Section 2S1.1, as marked in bold lettering:

(A) Proposed Amendment

Sections 2S1.1 and 2S1.2 are deleted and the following inserted in lieu thereof:

Sec. 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level (Apply the Greatest)

(1) The offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense (or otherwise was accountable, notified, and properly charged for the commission of the underlying offense under Sec. 1B1.3 (Relevant Conduct)) and the offense level for that offense can be determined, or, for 1956(a)(3) offenses, if the underlying offense was properly represented and the defendant committed or was a participant in the underlying offense (or otherwise was accountable, notified and properly charged for the commission of the underlying offense under Sec. 1B1.3 (Relevant Conduct) and the offense level for that offense can be determined; or

(2) 12 plus the number of offense levels from the table in Sec. 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of, or were to be used to promote, an offense involving the manufacture, importation, or distribution of controlled substances or listed chemicals; a crime of violence; or an offense involving firearms or explosives, national security, or international terrorism; or

(3) 8 plus the number of offense levels from the table in Sec. 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed (through proper representation of an underlying unlawful activity) that (A) the financial or monetary transactions, transfers, transportation, or transmissions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct , or (B) the funds were to be used to promote further criminal conduct, increase by 2 levels.

(2) If subsection (b)(1)(A) is applicable and the offense (A) involved placement of funds into, or movement of funds through or from, a company or financial institution outside the United States, or (B) otherwise involved a sophisticated form of money laundering, increase by 2 levels.

(b) The need for offense levels to comport with the seriousness of the defendant's offense conduct.

The Commission's proposed sentencing amendments for money laundering offenses are the result of a three-year effort directly resulting from a continuous ongoing guideline review, in-house studies, public hearings, testimonies of experts, and a thorough and diligent revision process. Congress, as one of the fundamental goals of the Sentencing Reform Act, specifically directed the Commission to

undertake this review of the sentencing guidelines so that offense levels comport with the seriousness of a defendant's offense conduct and thus unwarranted sentencing disparities for similar offense conduct are avoided.

Passage of P.L. 104-38 and disregard of the Commission's recommendations for these well justified amendments negates previous Congressional directives and is contrary to the spirit of the law - the Sentencing Reform Act. Furthermore, without proper justification or proper hearings, Congress, through its passage of P.L. 104-38, continues the disparities of sentencing and contradicts its own goal of balancing the federal budget by allocating close to \$4 billion for the building of additional prisons which, to a large extent, will house "marginal offenders" serving longer and undeserved sentences for offenses which do not comport with the seriousness of the offense conduct. Such contradictory policy is counterproductive to the U.S. economy and is not in the best interest of our country.

Because the Money Laundering statute was new, the Commission did not have much caselaw on which to base guideline penalties for money laundering offenses. The Commission based its original guidelines on representations made to Congress by the Department of Justice when it enacted the 1986 Anti-drug legislation believing, as Congress did, that the money laundering statute and its high sentencing levels would apply to professional money launderers, principally those associated with narcotics and organized crime. Accordingly, the U.S. Sentencing Commission promulgated appropriate guidelines that addressed the seriousness of such crimes by setting relatively high "base offense levels". These base levels were much higher than the base levels for other relatively serious offenses such as robbery, extortion, and aggravated assault.

These guidelines still remain in effect, even though in 1988 and in subsequent years, and through vigorous Department of Justice lobbying, Congress passed amendments to the money laundering laws,

including a "sting" provision. These new money laundering amendments created new classes of "offenders", some of them marginal and not involved with drugs or organized crime. The Department of Justice failed to provide guidelines to its attorneys on proper application of the amended money laundering statute. Thus, misapplication of the "sting" provision of the money laundering statute with a low threshold of "proof" and "evidence" often fabricated by overzealous government prosecutors created still another class of offenders subjected to the same sentencing guidelines as the more serious offenders. Further misapplication of the money laundering statute, charging excesses, and manipulation of the high sentencing levels of the statute in plea-bargaining by federal prosecutors, resulted in proliferation of offenders for underlying conduct which did not warrant such extreme punishment. Through such abuses in charging and plea-bargaining, disparities in sentencing levels became more common and received the attention of the U.S. Sentencing Commission and of the legal profession.

To alleviate these obvious disparities, the Commission conducted appropriate studies, held hearings and finally promulgated amendments to the guidelines which were commensurate with the seriousness of the underlying offenses. These are the well-justified amendments that P.L. 104-38 prevented from taking effect on November 1, 1995.

Contrary to Department of Justice claims, the Sentencing Commission's proposed amendments will not substantially lower penalties for serious money laundering offenses. In fact the amendments provide that the enhancement in sentencing for money laundering offenses will be tied to the underlying offense. However, the Commission's amendments provide that offenders will be punished in a manner which is more commensurate with the actual seriousness of the offense, thus eliminating the prosecutors' temptation to charge money laundering so frequently, which often leads to vast and disproportionately increased sentencing.

Finally, in the interest of justice and fundamental fairness, it is paramount that the U.S. Sentencing Commission's proposed amendments to the guidelines for money laundering be implemented by Congress as these amendments will be more effective, and will serve better our criminal justice system as they tie sentencing penalties more closely to the underlying offense from which the funds were derived.

(c) The consistency and appropriateness in the use of the money laundering statute

The Department of Justice had ample opportunities in the past to provide guidelines to its attorneys thus assuring consistency and appropriateness in the use of the money laundering statute. They have not done so. Neither have they addressed the issue of charging and plea practices of Federal prosecutors and the extreme sentencing disparities with respect to the offense of money laundering. As the Washington Post pointed out in a series of articles to be referenced in this commentary, and as Federal Judge Ideman in California and the 6th Circuit in Tennessee have suggested, prosecutorial misconduct is not being dealt honestly or effectively by the Department of Justice. It will be interesting to see if abusive charging and plea practices of its attorneys will be addressed honestly and effectively in the Department of Justice report that Congress has required in P.L. 104-38 or whether they will be whitewashed.

The disparities in sentencing and the charging excesses of federal prosecutors became vividly clear at the U.S. Sentencing Commission's public hearings on the proposed sentencing amendments to the guidelines for money laundering offenses, held in the last three years. There was an overwhelming support for the Commission's proposed amendments from those who testified at the public hearings. There was also severe criticism about the lack of consistency and appropriateness in the use of the money laundering statutes. To

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illustrate the problem we will reiterate for the record only some of the comments made at some of these hearings

One of the principal authors of the money laundering statutes, was Mr. Charles W. Blau (U.S. Sentencing Commission's Public Hearing on Proposed Sentencing Guideline Amendments, March 22, 1993, Washington DC. Transcripts of the hearing p.256-261). Mr. Blau had 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 lack of consistency and appropriateness in the use of the money laundering statute. At the hearing, among other comments, he stated:

"In looking at these statutes,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.

Similar views on the lack of consistency and appropriateness in the use of the money laundering statutes were additionally supported by testimony at public hearings held in 1994 and 1995. These reports are in the public record and in the Commission's archives.

(d) The charging and plea practices of Federal prosecutors with respect to the offense of money laundering.

The money laundering statutes and the high sentencing levels have been grossly abused by Federal prosecutors in charging and plea practices. This is especially true of the "sting" money laundering statute where prosecutors have "carte blanche" to fabricate the low threshold "evidence" and conditions that will guarantee a conviction. In the absence of guidelines from the Justice Department, overzealous prosecutors, anxious to obtain convictions, stretch both the law and the due process requirements in charging targeted individuals. The vagueness in the wording of the law and its definitions provides prosecutors with an excuse to circumvent the due process requirement of representation of an unlawful activity in sting operations. The same federal prosecutors control the fabrication of the evidence which may even be subsequently tampered to make a "sting" work every time. (See Example in the Appendix: The "Sting Money Laundering Conviction" of Dr. George Pararas-Carayannis in Hawaii - Gross Violation of His Due Process Right to a Fair Jury Trial under the Fifth Constitutional Amendment).

Charging abuses are often followed by plea-bargain abuses. The high sentencing level of the money laundering statute gives federal prosecutors a formidable weapon with which they can coerce defendants into "plea-bargaining". Plea bargaining essentially becomes threatening and blackmail tempered with promises of leniency at sentencing if defendants "cooperate". Those who succumb to the pressure, often receive sentences which are substantially lower than the guidelines. For those who refuse to plea bargain, the same federal prosecutors will serve them with superseding indictments that often charge frivolous, unsupported "offenses". Even if these coercive tactics still fail to coerce a defendant into "plea-bargaining", the benefit to prosecutors is that a defendant is stretched emotionally and financially to a breaking point so he cannot effectively put a defense. The charges in these superseding

or collateral indictments often are dismissed by federal prosecutors just before trial but only after they have taken their toll on a defendant and he has been rendered financially destitute. Finally, when a case makes it to trial and the defendant is convicted, as prearranged, not only the mandatory minimums are applied in sentencing in such defendant's case but the prosecutors ask for enhancements for "obstruction of justice" and for "not accepting responsibility for the crime".

At the 1993 Commission's hearing Mr. Bleau had the following comments pertaining to the charging and plea practices of Federal prosecutors with respect to the offense of money laundering:

"....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."

"..... I think that it (the money laundering statute) 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....."

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):

".....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."

Misconduct and excesses by federal prosecutors pertaining to money laundering offenses as reported by the press and the courts: Prosecutorial misconduct pertaining to the charging and plea practices of Federal prosecutors with respect to the offense of money laundering has reached epidemic proportions in our country. From January 10-15, 1993, the Washington Post published a series of six stories about the growing number of cases involving prosecutorial misconduct at the federal level. The articles, under the general heading "The Appearance of Justice", dealt with prosecutorial misconduct involving, among other things, "stings" and money laundering cases. In one of the articles a decision by Federal Judge James Ideman was reported, who dismissed a major racketeering and money laundering case on grounds of prosecutorial misconduct. Judge Ideman charged that the U.S. Attorney in that case withheld exculpatory (Brady material) evidence completely exonerating all the defendants, while showing the government's main witness to be a perjurer. The appellate court characterized the prosecutor's conduct as "intolerable" and recommended that the Attorney General review the case and decide whether the prosecutor should be subjected to departmental discipline. Judge Ideman complained in strong terms that after three years he was still waiting for the Department of Justice to address his charges against the prosecutor. In fact, he suggested a whitewash.

In other articles the Washington Post cited many other cases and examples of prosecutorial abuse, numerous instances of failure to disclose favorable evidence, government intrusion into the relationship between defense attorneys and clients, intimidation of witnesses and overzealous tactics designed to force guilty pleas before trial. The Post pointed out, that the Justice Department has been slow to investigate its own lawyers and has refused to release the results of investigations when completed.

On a December 20, 1993 editorial entitled "A Reno Reform" (page A24), it was mentioned that the "Washington Post" had received a letter from Attorney General Janet Reno responding to the articles on prosecutorial misconduct. Attorney General Reno promised actions that could lead to important and much needed reforms within the Department of Justice. According to the "Post" more than a year later the proposed reforms by Attorney General Reno had not been implemented.

On April 30, 1994, the "Washington Post" reported on the 6th Circuit's appointment of a federal judge in Tennessee to investigate charges of federal prosecutorial misconduct in that state because the internal Department of Justice review could not be trusted. Also, the Washington Post cited the Supreme Court finding that federal prosecutors committed fraud in the Demianjak case as yet another example that prosecutorial misconduct of its attorneys is not being dealt honestly or effectively by the Department of Justice.

(e) Disparities in Sentencing for Money Laundering Offenses.

There are many disparities and inconsistencies in the application of sentencing guidelines for money laundering offenses which are well documented by caselaw. For defendants who agree to "plea-bargain", federal prosecutors and the courts are very lenient and deviate substantially from the guidelines. For defendants who refuse to "plea bargain" not only the mandatory minimums are imposed but additional enhancement is provided for "obstruction of justice". It is not uncommon to have disparities of ten points or more for the same type of money laundering offense. This is particularly true for offenses prosecuted via the "sting" money laundering statute. Sentencing disparities can be illustrated with the following examples within the 9th Circuit, both involving money laundering "sting" offenses.

Dr. Pararas-Carayannis's "conviction" for a "sting" money laundering offense involving the proceeds (a few hundred dollars in credit card slips deposited in his merchant account) of an unlawful activity (an escort service, represented only as such by government undercover agents) in Hawaii, resulted on two counts of alleged violation of 1956(a)(3). Under the mandatory sentencing guidelines, Pararas-Carayannis received 20 points and an enhancement of two additional points for "obstruction of justice". Under the guidelines, he was sentenced to 41 months of imprisonment and 24 additional months of supervised release, in spite of the fact that just prior to sentencing, he had suffered a third, acute and almost fatal, anterolateral myocardial infarction (heart attack) that required two angioplasties and had resulted in his total disability. Motions for a downward departure from the sentencing guidelines for aggravated circumstances as provided by the U.S. Sentencing Commission, were denied by the court.

Ironically, and in spite of the "mandatory sentencing guidelines", a similar 1956(a)(3) conviction (with explicit representation that the source of proceeds were drug money) in the U.S. District Court in Montana, resulted recently in only a ten-month "split sentence" for Defendant Nelson in the pre-release center in Great Falls, Montana, with five months in the custody component and five months in the pre-release component of the center. Under the same Mandatory Sentencing Guidelines and for a similar 1956(a)(3) "sting offense" (with the only representation being that the proceeds were those of an escort service), and in spite of his advanced age and dismal health, Dr. Pararas-Carayannis was sentenced to more than quadruple of Nelson's sentence.

(f) Conclusions and Recommendations

The present high sentencing levels of the money laundering statutes often violate the Eighth Amendment, because they impose excessive

bail, excessive fines, and cruel and unusual punishment totally out of proportion to the underlying offenses. Congress needs to revise the language of the money laundering laws to safeguard against misapplications of the statutes. There have been serious charging and plea-bargain abuses by federal prosecutors in money laundering prosecutions. Due process requirements of the money laundering statutes are often ignored by federal prosecutors. Congress should require the Department of Justice to provide proper charging and plea bargaining guidelines to its attorneys. Additional guidelines should be provided by the Department of Justice on how targets should be selected for deceptive government "sting" 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; and on how outrageous government invasion of privacy can be avoided.

Prosecution of money laundering offenses, particularly through 18 U.S. Code, Sections 1956 and 1957 have produced sentences that are anomalous and which have undermined the uniformity that Congress sought to achieve when it adopted sentencing guidelines. Present base offense sentencing levels for money laundering offenses are often disproportionately higher to those of the underlying conduct which often may be a minor offense. Often the offense level of the underlying conduct resulting in a "money laundering conviction" cannot even be determined. The U.S. Sentencing Commission's proposed amendments to the sentencing guidelines will introduce fairness in sentencing and should be implemented.

Respectfully Submitted,

ASSOCIATION OF AMERICANS FOR CONSTITUTIONAL LAWS AND JUSTICE

g) APPENDIX: The "Sting Money Laundering Conviction" of Dr. George Pararas-Carayannis in Hawaii - Gross Violation of His Due Process Right to a Fair Jury Trial under the Fifth Constitutional Amendment.

Dr. George Pararas-Carayannis, a prominent scientist with 25 years of Government Service was prosecuted for laundering a few hundred dollars of a hypothetical government "escort service" under 1956(a)(3). His conviction involved a serious constitutional violation which deprived him of a fair jury trial as required by the due process provision of the Fifth Amendment. Specifically, the U.S. District Court in Hawaii violated his Fifth Amendment right to a fair jury trial by preventing the jury from hearing testimony and weighing challenged videotaped evidence (as required by Rule 1008 (Article X) of the Federal Rules of Evidence) which would have clearly resulted in his acquittal.

After the closing of the case, outside the presence of the jury and while the jury was deliberating, the court took the testimony of government witnesses who admitted to the fact that the videotapes which had been previously challenged as tampered but had been introduced into evidence anyway, had been indeed removed improperly from the courtroom by the government attorney, during trial. These videotapes had been taken to a hotel room in Waikiki (Hilton Hawaiian Village, room 1362), registered to a government audiovisual expert brought in from the Washington D.C. area. Based on this damaging testimony the court ruled that this videotaped evidence could not be shown to the jury during their deliberations. However, the court failed to summon the jury and apprise them of these new facts and developments relating to the court's evidence, to give additional instructions, or to call for a mistrial. The jury was permitted to continue its deliberations unaware of the improprieties that had taken place.

On the third day of jury deliberations, the court reversed its ruling, reopened the case, and again in the absence of the jury, took additional testimony of government witnesses on the improper removal of the videotaped evidence. At that time these government witnesses testified that electronic equipment capable of tampering videotapes had been brought, also, into the government expert's room but that the

expert had since returned to Washington D.C. and could not testify as to what he was doing with the videotapes.

In spite of its own previous ruling and the testimony on the government attorney's misconduct and outrageous violations of the rules of evidence and procedure, the court held a cursory, in-camera viewing of the challenged videotapes and decided on both admissibility and weight of this videotaped evidence, even though the latter is clearly a jury function supported by Rule 1008 (Fed R.E.) and by caselaw. The jury was not allowed to learn of the improprieties with the handling of the evidence, about the electronic equipment in the expert's room, or the government's intent in taking the videotapes there without the court's knowledge or permission.

Furthermore, obvious discrepancies and alterations which were identified and pointed out during this cursory, in-camera review, were indicative that these videotapes were altered copies and not the alleged originals which had been shown to the jury during trial. Disregarding the testimony pointing out specifically to numerous discrepancies, erasures and alterations, the court ruled that there were no changes and, even if there were, they were not prejudicial to the case. This, simply, was not the case. The tapes had been tampered. The changes were prejudicial.

In spite of vigorous protests by the defense, the court re-authenticated these copies as originals, ruled on their admissibility and weight, then allowed the jury to view them without disclosing the damaging testimony that would have affected significantly the jury's confidence in their validity. In addition, the court allowed the jury to use as an "aid" in understanding the inaudible portions of the videotapes, the government attorney's edited transcripts which had also been improperly removed from the court during trial because, allegedly, the U.S. District Court in Hawaii did not have an "evidence storage facility". Jurors, unable to understand the still inaudible portions of the disputed videotapes, relied on the government attorney's edited transcripts and were seen taking written notes from these records.

In effect, the Court's actions in reversing its ruling and in reopening the trial without the jury's presence, then deciding on issues related to both admissibility and weight of challenged, tainted evidence, deprived Dr. Pararas-Carayannis of his due process right to a fair trial by jury that he was entitled to under the Fifth Amendment. This was clear, serious error and abuse of discretion which prejudiced and determined the outcome of the jury's verdict. If the jury had been apprised by the court of the government attorney's egregious misconduct with the handling of the court's evidence, during trial, and if they had heard the testimony of government witnesses that electronic equipment capable of tampering had been brought to the hotel room of the government audiovisual expert where the videotapes had been taken, Dr. Pararas-Carayannis would have been acquitted of all charges against him. Instead, after 11 days of deliberations, the jury had acquitted him on five counts and were "hung" on two counts. The court urged to continue deliberations and allowed them to view the last and most tampered of the videotapes. Immediately after viewing this tampered tape and the creative government transcript, the jury returned a guilty verdict on these two counts.

These two counts charged Dr. Pararas-Carayannis with a violation of 18 U.S. Code 1956(a)(3), the money laundering sting statute, a statute which is often abused and which has been widely characterized as an "instrument of oppression" because of its low threshold of proof in guaranteeing convictions by government prosecutors. In this particular case, these two counts charged Dr. Pararas-Carayannis with the "thought crime" of knowingly and intentionally "disguising and concealing monetary instruments", the proceeds (a few hundred dollars) of an unlawful activity. The unrepresented unlawful activity was a Travel Act violation, presumably a hypothetical government escort service which was involved in prostitution, even though the court transcripts and the testimony of government witnesses show clearly that such representation was never made. Dr. Pararas-Carayannis was never charged with a Travel Act violation or a State offense even peripherally connected with prostitution. A Travel Act conviction requires a substantive State felony offense. In his case, these alleged violations were used only

for "definitional" purposes in fabricating and sustaining via a circuitous statutory track, the money laundering charges. Finally, in the absence of a representation of an unlawful activity by the undercover agent, the court had allowed into evidence hearsay testimony that "all escort services are fronts from prostitution", thus creating the impression for the jury that the representation requirement of an unlawful activity had been made by the government undercover agent simply by telling Dr. Pararas-Carayannis that she needed his help in processing through his merchant American Express and Diners account a few charge card slips of her escort service, something that banks do routinely on a daily basis.

Ironically, most escort services in Hawaii and elsewhere, advertise readily, to this day, their acceptance of credit cards. Banks routinely issue them merchant accounts. The telephone company and the Yellow Pages collect funds and provide services that promote these business and their acceptance of credit cards. Both State and Federal Government collect proceeds of such businesses in the form of taxes. Neither a bank nor a single escort service in Hawaii was ever prosecuted for money laundering or closed down for alleged prostitution by the State or the Federal Government. If indeed the requirement for proving money laundering is the supposition that "all escort services are fronts for prostitution", then banks, telephone companies, Yellow Pages and State and Federal Agencies must be guilty of laundering millions in "monetary instruments".

Dr. Pararas-Carayannis's conviction and sentencing, obtained with such charging extrapolation of the money laundering statute, and through outrageous prosecutorial misconduct, are indeed hypocritical, ludicrous and represent a clear abuse of the money laundering laws and of the Criminal Justice System. Finally, more than \$3 million of taxpayer's money has been wasted thus far to "criminalize" and destroy Dr. George Pararas-Carayannis, an internationally-recognized, government scientist who has contributed significantly to his field of work and to society.