

034-96

ASSOCIATION OF AMERICANS FOR CONSTITUTIONAL LAWS AND JUSTICE
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February, 27, 1996

MEMBERS OF 104TH CONGRESS

SUBJECT: Public Law 104-38 disapproving amendments to the Federal Sentencing Guidelines relating to lowering of crack sentences and sentences for money laundering and transactions in property derived from unlawful activity; Charging and plea practices of Federal prosecutors with respect to the offense of money laundering; Consistency and appropriateness in the use of the money laundering statute.

Dear Senator/Representative:

It is regrettable that Congress, without holding proper hearings or properly studying the issues, substituted its judgement for that of the U.S. Sentencing Commission's in preventing long-needed sentencing guideline changes from taking effect on November 1, 1995, by passing Public Law 104-38. The amended guidelines would have assured that offense levels comport with the seriousness of a defendant's offense conduct and would have prevented unwarranted sentencing disparities as a result of abusive charging and plea-bargain practices by federal prosecutors. Also, it is unfortunate that P.L. 104-38 grouped together drug related sentencing with sentencing which often involves minor underlying unlawful activity, unrelated to drugs but improperly and excessively charged as "money laundering" by federal prosecutors.

The Commission's proposed sentencing amendments for money laundering offenses were 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, through its passage of P.L. 104-38, Congress 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

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comport with the seriousness of the offense conduct. Such contradictory Congressional policy is counterproductive to the U.S. economy and is not in the best interest of our country.

For your information, consideration, and possible support, we are attaching our Commentary on the U.S. Sentencing Commission's Proposed Guidelines on amendments for Laundering Monetary Instruments addressing the need for offense levels to comport with the seriousness of the defendant's offense conduct. 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".

Charging and "plea-bargain" practices, of federal prosecutors for alleged "money laundering offenses" have been excessive and abusive. They have reached epidemic proportions in our country. In some instances these practices have approached the level of human right violations, in spite of their disguised facade of "due process".

International law (Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights, and the U.N. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Resolution 3452 (XXX)) provide that:

"no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Torture is defined as:

"any means or any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

Dr. George Pararas-Carayannis's prosecution, "conviction" and "sentencing" in Hawaii, following a money laundering "sting" is an example of prosecutorial excess, and a human rights' violation. It is more fully documented in the attached Commentary to the U.S. Sentencing Commission and its Appendix. A circus arrest of Dr. Pararas-Carayannis and his character assassination by the media were carefully prearranged by government attorneys through a series

government expert had set up an electronic laboratory. The jury was not allowed to hear anything pertaining to these improprieties or to weigh the reliability of the tainted "evidence". The court reversed its previous ruling, and allowed the jury to view copies of the challenged videotapes even though significant alterations had been made. Unaware of the improprieties of the evidence, the jury acquitted Dr. Pararas-Carayannis on five counts but returned a guilty verdict on two counts and on the basis of hearsay evidence that "all escort services are fronts for prostitution". The two counts were for "disguising and concealing" monetary instruments of an unrepresented unlawful activity, when he deposited two checks from the credit card company into his business account.

As a result of this unprecedented psychological torture and inhumane stress he had been subjected, six weeks later Dr. Pararas-Carayannis suffered a nearly fatal heart attack which has resulted in his total disability and a progressing heart failure. In spite of his dire health condition and advanced age, he was subsequently sentenced to a total of 65 months for these two counts (41 months in prison and 24 months of supervisory release). This is in addition to four years of supervised release he has already served while waiting to be "processed", making his total punishment almost 10 years. Ironically, a similar 1956(a)(3) "sting" conviction in Montana, but with clear and explicit representation from an undercover government agent that the proceeds of the underlying unlawful activity were from drugs, resulted in only a ten month sentence for defendant Nelson, with half of it in a pre-release center.

In Dr. Pararas-Carayannis case, government attorneys have wasted thus far more than \$3 million of taxpayers' money for an unwarranted prosecution of fabricated "money laundering" amounting to a few hundred dollars. It is absurd that government prosecutors would involve themselves in such charging excesses, in such abusive plea bargaining practices, and in such waste of taxpayers' money when there is real crime and limited resources to fight it.

Abusive charging and plea practices of Federal prosecutors, as illustrated by the above example, must be stopped. Laws such as P.L. 104-38 disapproving amendments to the Federal Sentencing Guidelines are contradictory to the Sentencing Reform Act and prolong the disparities and injustices of both charging and sentencing. Congress needs to revise the language of the money laundering laws to safeguard against misapplications of the money laundering statutes and plea-bargain abuses 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 statute on 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 Congress sought to achieve when it adopted sentencing guidelines. Our Criminal Justice System is often being subverted by those who have the responsibility to uphold it.

In conclusion, we encourage you to introduce or support legislation which will prevent further abuses of the money laundering laws. These laws need thorough review and revision 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 encourage you to revise, amend or repeal Public Law 104-38 because it contradicts the intent and spirit of the Sentencing Reform Act. We ask that you support proposed amendments promulgated by the U.S. Sentencing Commission which will eliminate abuses and disparities of the sentencing guidelines.

Sincerely,

ASSOCIATION OF AMERICANS FOR CONSTITUTIONAL LAWS AND JUSTICE (AACLJ)

Attachment: Commentary on the U.S. Sentencing Commission's Proposed Guidelines and Sentencing Amendments pertaining to Laundering Monetary Instruments.