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JUSTICE UNDONE: CLEMENCY DECISIONS IN THE CLINTON WHITE HOUSE

MAY 14, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BURTON, from the Committee on Government Reform submitted the following

SECOND REPORT

On March 14, 2002, the Committee on Government Reform approved and adopted a report entitled "Justice Undone: Clemency Decisions in the Clinton White House." The chairman was directed to transmit a copy to the Speaker of the House.

CHAPTER THREE

HUGH RODHAM'S ROLE IN LOBBYING FOR GRANTS OF EXECUTIVE CLEMENCY

FINDINGS OF THE COMMITTEE

HUGH RODHAM'S INVOLVEMENT IN THE VIGNALI COMMUTATION

Vignali's clemency petition was false and misleading.

- *Carlos Vignali lied in his clemency petition.* First, he continued to maintain his innocence, despite overwhelming evidence of his involvement in selling a substantial amount of cocaine across state lines and a specific finding by the sentencing judge that he lied at trial about his involvement in a large drug distribution network. Second, Vignali claimed that he was a first-time offender, despite the fact that he had a prior criminal record. By not accepting responsibility for his crime and lying about his

background, he should not have been eligible for executive clemency.

Vignali's supporters provided letters of support that were false and misleading.

- *A key element of the campaign by Carlos Vignali and his father Horacio, was a series of letters on Carlos' behalf from prominent Los Angeles politicians.* A number of these letters contained misleading statements calculated to create the impression that Carlos Vignali was innocent. The officials who submitted letters included Representative Xavier Becerra, Representative Esteban Torres, State Assembly Speaker Robert Hertzberg, State Assembly Member Antonio Villaraigosa, State Senator Richard Polanco, Los Angeles County Supervisor Gloria Molina, Los Angeles City Councilmember Mike Hernandez, and Cardinal Roger Mahony, Archbishop of Los Angeles.

Los Angeles County Sheriff Lee Baca provided critical support for the Vignali commutation that was inappropriate, given his position.

- *Sheriff Baca had a close relationship with Horacio Vignali that was based on Vignali's political and financial support for Baca.* Sheriff Baca has known Horacio Vignali since 1991, and Vignali has been a key political supporter of Baca, giving him at least $11,000 in contributions and raising between $60,000-$70,000 more.

- *Sheriff Baca spoke with the White House in support of the Vignali commutation.* In January 2001, Baca received a telephone call from Hugh Rodham in which Rodham told Baca that he would get a call from the White House about Horacio Vignali. Shortly thereafter, Baca received a call from White House staff and spoke in support of Horacio Vignali. Based on Baca's statements in this telephone call, White House staff clearly and justifiably concluded that Baca supported the commutation of Carlos Vignali's sentence.

- *Sheriff Baca continues to claim, without any basis, that he did not support the Vignali commutation.* Rather than express regret for his role in the Vignali commutation, Sheriff Baca maintains that he opposed the Vignali commutation and did nothing that could have been interpreted as support for the commutation. However, Sheriff Baca's supposed opposition to the Vignali commutation does not square with the fact that: (1) he drafted a letter that he believed Horacio Vignali would use in the clemency effort and (2) when he was asked squarely by the White House if the President should commute Vignali's prison sentence, he stated that it was "the President's decision to make," rather than express his opposition. These facts, and others outlined in this report, indicate that Sheriff Baca wanted to support the Vignali commutation, but was afraid of creating a paper record that would clearly indicate his support.

- *Sheriff Baca's efforts on behalf of the Vignalis are even more inappropriate given that there were extensive allegations that Horacio Vignali, Carlos' father, was also involved in illegal drug trafficking.* It is inappropriate enough for a senior law enforcement official like Baca to support a grant of clemency for an unrepentant, large-scale drug dealer like Carlos Vignali. However, when coupled with credible allegations indicating that Horacio Vignali was a drug dealer, and in fact was the source of cocaine supply for his son, Baca's support of Horacio and Carlos Vignali is even more inappropriate.

U.S. Attorney Alejandro Mayorkas provided critical support for the Vignali commutation that was inappropriate, given his position.

- *U.S. Attorney Alejandro Mayorkas called the White House in support of the Vignali commutation.* Mayorkas, the top federal prosecutor in Los Angeles, was asked by Horacio Vignali to call the White House in support of his son's clemency petition. Mayorkas then called the White House about the Vignali commutation. While Mayorkas does not recall the details of his conversation, he now concedes that his call conveyed support for the Vignali commutation.

- *Mayorkas supported the Vignali commutation despite his ignorance of the facts of the case and his knowledge that the prosecutors responsible for the Vignali case opposed clemency.* Before he called the White House, Mayorkas had spoken twice with Todd Jones, the U.S. Attorney responsible for the Vignali case. Jones told Mayorkas that Vignali was a "major player" in drug trafficking, that he was "bad news" and that Mayorkas should not "go there" when it came to Vignali. Despite these warnings from a prosecutor who was intimately familiar with the Vignali case, Mayorkas still called the White House in support of the Vignali commutation.

- *Mayorkas' support for the Vignali commutation was inappropriate.* Mayorkas knew little about the Vignali case. What he did know indicated that Carlos Vignali was an unrepentant, large-scale criminal. These facts alone make his support for the commutation, as a senior federal prosecutor, totally inappropriate.

There are a number of allegations that both Horacio and Carlos Vignali were involved in illegal drug trafficking.

- *There are allegations that, in addition to his son, Horacio Vignali was involved in illegal drug trafficking, and that Carlos Vignali was involved in drug trafficking far beyond the conduct that led to his conviction in Minnesota.* DEA reports documenting these allegations include the following statements:

  "[Horacio Vignali] negotiated with ATF agents to sell a machine gun and stated to them that he had also smuggled heroin into the United States utilizing automobiles."

> "[Redacted] has also purchased cocaine from Carlos Vignali Jr. of Los Angeles . . . Vignali's father Carlos Vignali aka 'pops' owns a body shop, at 1260 Figueroa and is the source of supply for his son."
>
> "Carlos Horatio Vignali's role in [George Torres' drug dealing] organization is relatively unknown at this time. It is believed that Vignali functions as a financial partner in the organization."

- *These DEA reports are corroborated by law enforcement personnel who indicate that they had received information indicating that both Horacio and Carlos Vignali were involved in large-scale drug trafficking.* These charges have never been formally made in court or substantiated by physical evidence. However, the mere existence of such allegations should have precluded senior law enforcement and political officials from supporting a commutation for Carlos Vignali on the strength of his father's reputation. Nonetheless, it appears that no one checked with the DEA prior to granting the commutation.

Hugh Rodham provided false and misleading information to the White House in support of the Vignali commutation.

- *Hugh Rodham was paid $204,200 for his work on the Vignali commutation.* It appears that, in return for this money, he worked part-time for two months gathering materials in support of Vignali's case and making telephone calls to White House staff. It appears that Rodham's payment in the Vignali matter was contingent upon his success, as he received the $200,000 payment on January 24, 2001, after President Clinton granted clemency to Vignali.

- *Rodham repeatedly provided false information during his communications with the White House.* First, and most importantly, Rodham told Bruce Lindsey that the trial attorney who prosecuted Vignali supported the commutation. This was completely false. Second, Rodham told Lindsey that Vignali was a first-time offender when, in fact, he had two prior convictions and two other arrests. Rodham also told Lindsey that Vignali "did not play a major role in the offense" when, in fact, Vignali was a major source of cocaine for the Minnesota drug-dealing ring at issue in his case.

Hugh Rodham told the White House that First Lady Hillary Rodham Clinton was aware of his lobbying efforts and that the Vignali commutation was "very important" to her.

- *Hugh Rodham told White House staff that the Vignali commutation was "very important to him and the First Lady as well as others."* This statement is confirmed by the independent recollection of the White House staffer who spoke to Rodham as well as the note that she took contemporaneously. Rodham's statement raises two possibilities: first, that the First Lady was aware of and approved of Hugh Rodham's lobbying efforts; or,

second, that Hugh Rodham was lying to White House staff regarding the First Lady's knowledge of his efforts.

The White House sought the opinion of powerful Los Angeles political figures, but failed to consult with the prosecutors or judge who understood the Vignali case.

- *White House staff engaged in telephone conversations with a number of outside individuals regarding the Vignali case—Hugh Rodham, Lee Baca, and Alejandro Mayorkas, none of whom knew very much about the Vignali case.* It appears that key White House staff gave great weight to the input provided by Rodham, Baca, and Mayorkas, even though they knew little about the case and had mixed motives.

- *White House staff failed to reach out to the prosecutors who had convicted Vignali or the judge who sentenced him.* White House staff justified their failure to take this simple action by concluding that they knew that the prosecutors and judge would object, so there was no need to speak to them. However, if the White House had spoken to Todd Jones, Denise Reilly, Andrew Dunne, or Judge David Doty, they would have learned that Carlos Vignali: (1) was not a small-time drug dealer; (2) was unrepentant about his criminal activity; and (3) never cooperated with law enforcement by telling them who supplied him cocaine.

The White House ignored the strenuous objections to the Vignali commutation that were lodged by the Pardon Attorney.

- The Pardon Attorney provided the White House with a report that contained his recommendation against granting the Vignali commutation. This report contained a number of powerful arguments against the commutation, which were apparently ignored by the White House. The existence of the Pardon Attorney's report means that the White House cannot claim that it was totally unaware that Vignali's arguments were completely false. The White House knew that the Vignali clemency petition had no merit, yet decided to grant the commutation anyway. President Clinton's decision raises questions about why the Vignali commutation was granted.

Rodham has apparently misled the public about returning to the Vignalis those fees he received in connection with the clemency and ignored former President and Senator Clinton's request that he do so.

- On February 21, 2001, at the request of former President Clinton and Senator Hillary Rodham Clinton, Rodham promised to return to Horacio Vignali the legal fees he received in connection with the Vignali clemency. But, as of June 2001, Rodham had apparently returned only about $50,000 of the money that Horacio Vignali paid him. Rodham's attorney has confirmed to Committee staff that Rodham has not returned any additional amounts and has no plans to return the remaining $154,000.

HUGH RODHAM'S INVOLVEMENT IN THE BRASWELL PARDON

Glenn Braswell was under investigation by multiple federal agencies and several state attorneys general when the pardon was granted.

- Over the past two decades, Braswell has created a dietary supplement empire using false advertising to mislead consumers. After serving time in prison for mail fraud and tax evasion in 1983, Braswell has continued to defraud consumers about the benefits of his herbal remedies. In addition to facing numerous lawsuits, Braswell's companies have been investigated by the Internal Revenue Service, Federal Trade Commission, Food and Drug Administration, and Better Business Bureau.

- Unsurprisingly, Braswell was under another criminal investigation by federal prosecutors for a massive tax evasion and money-laundering scheme when he was pardoned. Braswell's petition bypassed the traditional route through the Justice Department and went directly to the White House. If the FBI had conducted a background investigation instead of the White House, Braswell's petition would have been rejected quickly.

Braswell paid Hugh Rodham $230,000 for successfully obtaining the pardon.

- Braswell hired Rodham to support his pardon petition for $230,000. For this price, Rodham claims he forwarded a letter of support for Braswell to the White House Counsel's Office and made a follow-up inquiry. According to Rodham, these two actions were the extent of his role in the Braswell pardon. Rodham refunded the $230,000 to Braswell after facing widespread criticism from the media and members of both political parties.

HUGH RODHAM'S EFFORTS TO OBTAIN CLEMENCY FOR THE LUMS

Gene and Nora Lum, prominent Democratic contributors and fundraisers, were convicted of making illegal conduit contributions and tax offenses.

- *In 1997, the Lums pleaded guilty to making $50,000 in illegal conduit contributions to the DNC.* They were sentenced to home detention, confinement in a halfway house and a $30,000 fine. In August 1998, Gene Lum pleaded guilty to tax fraud for filing tax returns claiming more than $7.1 million in false deductions and was sentenced to two years imprisonment.

The Lums attempted to obtain executive clemency through Hugh Rodham.

- *Hugh Rodham lobbied the White House as part of the Lums' efforts but failed to secure them a grant of clemency*. In December 2000, Nora Lum called one of her husband's criminal attorneys

and asked him to send various documents to Hugh Rodham at the White House. He did so. In early January 2001, Rodham called Gene Lum's attorney again and asked him to resend those documents directly to, among others, Meredith Cabe, an associate White House counsel responsible for clemency matters. Subsequently, Rodham telephoned Cabe and discussed the merits of the Lums' pardon request. Cabe then told White House Counsel Beth Nolan and Deputy White House Counsel Bruce Lindsey about her discussion with Rodham. Both told Cabe that the Lums were not going to receive clemency.

The Lums and Hugh Rodham have refused to cooperate with the Committee's investigation.

- *Gene and Nora Lum have refused to cooperate with the Committee's investigation.* The Lums' daughter, Nicole (with whom Hugh Rodham apparently had some sort of business relationship), has likewise declined to be interviewed by the Committee. Hugh Rodham has also refused to cooperate with the Committee's request for an interview. Therefore, the Committee is unable to obtain a full understanding of the Lums' efforts to obtain executive clemency and Rodham's role in those efforts.

INTRODUCTION

Unlike Roger Clinton, Hugh Rodham was highly successful in leveraging his relationship with the President and First Lady into lucrative work lobbying for grants of clemency. The Committee is aware of three cases in which Hugh Rodham lobbied the White House for grants of executive clemency: Carlos Vignali, Glenn Braswell, and Gene and Nora Lum. Rodham was successful in two of these cases and was paid over $430,000 for his work.

Simply put, Rodham inappropriately used his access to the White House to lobby for grants of clemency, which were not deserved and would not have been granted but for his intervention. Carlos Vignali was a supplier of cocaine to a major drug-dealing ring in Minnesota who never admitted his guilt or cooperated with law enforcement. Yet, because of Hugh Rodham's efforts, he had his sentence cut from 15 to 5 years. Glenn Braswell was a highly successful con artist who had his earlier fraud conviction erased despite that he was under active investigation for tax fraud at the time of the pardon. The fact that Vignali and Braswell received clemency from President Clinton through the efforts of Hugh Rodham undermines public confidence in the President's exercise of the clemency power and in the equality of our laws.

I. THE CARLOS VIGNALI COMMUTATION

A. The Case Against Carlos Vignali

On December 20, 1993, a federal grand jury in Minnesota issued a 34-count indictment against 30 defendants. The indictment resulted from the largest drug investigation in Minnesota history.[1]

[1] Superceding Indictment, *U.S. v. Vignali* (D. Minn. Dec. 30, 1993) (Exhibit 1). *See also Drug Ring Case Wrapped up with 2 Convicted, 1 Acquitted*, STAR TRIB. (Minneapolis-St. Paul), Dec. 13, 1994, at 2B.

According to the indictment, Carlos Vignali and his co-defendants sent large quantities of cocaine to Minnesota by mail from California, converted it to crack, and distributed it quickly on the street.[2] Vignali was indicted on one count of conspiring to distribute cocaine; two counts of using facilities in interstate commerce with the intent to promote a business enterprise involving narcotics; and one count of illegally using a communication facility to facilitate the distribution of cocaine.[3] According to the government, Vignali and his associates sold a kilogram of crack a day as late as November 1993.[4]

The investigation that resulted in Vignali's conviction began locally with a probe of Gerald and Shirley Williams, who were suspected of distributing cocaine.[5] As the scope of the investigation expanded, Minneapolis narcotics authorities obtained the assistance of federal law enforcement agencies.[6] Based on information obtained from confidential informants and other sources, authorities initiated a court-ordered wiretap of several residential and cellular telephones to monitor calls to and from Gerald Williams regarding cocaine distribution.[7] Many of the intercepted conversations to and from Williams' residential and cellular telephones involved coded language and had to be interpreted by investigating officers.[8]

In the course of its wiretap surveillance, authorities intercepted telephone conversations between Vignali and others during which cocaine shipments to Minnesota were discussed.[9] Authorities ultimately learned that Williams' original supplier of cocaine in California was Dale Evans, who in turn obtained his supply from Jonathan Gray and, later, Carlos Vignali.[10] The evidence obtained in the investigation indicated a broad level of involvement by Vignali in a multi-state conspiracy to distribute cocaine.[11] In that context, authorities discovered that, in October 1993, Vignali sold a substantial quantity of cocaine to Todd Hopson in Los Angeles for distribution in the Minnesota area[12] and supplied an additional six kilograms of cocaine to Minnesota-area distributors through use of the mails and the telephone.[13]

On November 9, 1993, Minnesota law enforcement executed warrants on several individuals involved in the drug conspiracy, including Dale Evans.[14] Within Evans' home and vehicles, law en-

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[2] *Id;* Superceding Indictment, *U.S. v. Vignali* (D. Minn. Dec. 30, 1993) (Exhibit 1).
[3] *Id.*
[4] *Drug Ring Case Wrapped up with 2 Convicted, 1 Acquitted*, STAR TRIB. (Minneapolis-St. Paul), Dec. 13, 1994, at 2B.
[5] Telephone Interview with Tony Adams, Officer, Minneapolis Police Department, 4th Precinct, Narcotics Division (Mar. 27, 2001).
[6] *Id.*
[7] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 33 (Exhibit 2) (incorporated into Judgment in a Criminal Case as finding of fact).
[8] *Id.*
[9] *Id.*
[10] *Id.* at para. 31.
[11] *Id.* at para. 30, 31, 42, 45, 46, 49, 57, 58, 59, 66, 67, 68, 71. *See also* Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 1001) (describing evidence supporting finding of Vignali's broad level of involvement in conspiracy). Before leaving the U.S. Attorney's Office, Jones obtained, as the lead AUSA in the Vignali investigation, the court orders for the wiretaps; represented the Government at suppression hearings; and presented the case to the grand jury. In 1998, Jones returned as the U.S. Attorney for the U.S. District of Minnesota.
[12] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 68 (Exhibit 2) (incorporated into Judgment in a Criminal Case as finding of fact).
[13] *Id.* at para. 42.
[14] *Id.* at para. 85, 87.

forcement found an AK-47 assault rifle and ammunition, a Desert Eagle pistol and ammunition, a Smith and Wesson 9 millimeter pistol and loaded magazine, a bag containing marijuana, pagers, addresses of other co-conspirators, pictures of him and some of the other co-conspirators target-shooting in California, and various other items.[15] Searches and arrests of other co-conspirators likewise revealed large amounts of cash, cocaine and other contraband, drug paraphernalia, guns, and ammunition.[16] As a result of these searches and arrests and with the assistance of Los Angeles law enforcement, Carlos Vignali was arrested in Los Angeles on May 6, 1994,[17] and extradited to Minnesota for trial.[18]

Vignali's trial began on October 27, 1994. In his opening statement to the jury, Vignali's defense attorney, Danny Davis, repeatedly characterized the alleged drug conspiracy as "a black drug network":

> [T]he indictment that His Honor read for you—it is a sensitive suggestion about the evidence in this case—and I do it with complete deference to what the court suggested earlier about drugs, and our sensitivities, about race, and our sensitivities—but this conspiracy, the evidence will show, really comes down to a black drug dealing network. One by one those drug dealers, that the prosecution has found it necessary to come in and put on as witnesses, will make clear this is a nationwide black drug-dealing network. You can't get around it. Disabuse yourself that I am prejudiced when I say that. It is a fact. My client is not [black].[19]

Counsel for the co-defendants thereupon moved for a mistrial:

> Mr. FENSTER [Counsel for Melvin Campbell]: [I]t is offensive, what he is doing, and I think that just because he is a defense counsel doesn't excuse him from this kind of offensive behavior, and I think the court—I don't know about a mistrial, maybe that is not appropriate—I am not quite sure what to do, but I think I will move for a mistrial. I think that kind of presentation to the jury is so offensive to the fabric of our law that it is impossible for the jury to now be able to have a fair trial when he's painted the other defendants in a black drug-dealing network. Certainly the prosecution would have a mistrial if they did that.
>
> Mr. CASCARANO [Counsel for Todd Hopson]: I join in that motion.
>
> Mr. GRAY [Counsel for Claude Oliver Phillips]: I join in that motion and, if the court doesn't grant it, I move to

[15] *Id.* at para. 87.
[16] *Id.* at para. 85–101. *See also* Telephone Interview with Tony Adams, Officer, Minneapolis Police Department, 4th Precinct, Narcotics Division (Mar. 27, 2001).
[17] Evans immediately cooperated with law enforcement. *Id.* He told DEA that he worked for Vignali, a.k.a., "C-Low" and identified him with a still-shot photograph of Vignali's appearance in a rap video.
[18] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 102 (Exhibit 2). When he was arrested, Vignali stated that he knew Gray but had not seen him for about a year; that Gray introduced him to Evans, who was interested in possibly buying his townhouse; and that no one had ever referred to him as "C-Low."
[19] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Oct. 27, 1994) at 113–14.

> strike every word that Mr. Davis has said about a black drug network around the nation. And, if he says it again, I ask he be jailed. It is the worst conduct I have seen by a defense lawyer in twenty-four years.
>
> Mr. CASCARANO: Your Honor, [what] Mr. Davis has done is paint not only the three black defendants as not clothed with the presumption of innocence, but what he has done is he has painted them guilty by virtue of their skin color.[20]

The district court denied the motion for a mistrial. However, it did caution the jury that the defendants' race should play no role in its determination of their guilt or innocence.[21] Even though the court did not grant a mistrial, Vignali's crude effort to play the race card against his codefendants is highly troubling. Vignali's conduct, through his counsel, is even more troubling when considered in light of the fact that one of his supporters later claimed, without any factual support, that Vignali was the victim of racial prejudice at trial.

At Vignali's trial, the government presented compelling evidence showing that he conspired to traffic cocaine, aided and abetted the mailing of at least two packages of cocaine from California to Minnesota, and used the telephone to facilitate the sale of cocaine. That evidence included the testimony of various co-conspirators, including Dale Evans, Gerald Williams, and Ronald Nunn. Evans testified that, beginning in March 1993, he bought cocaine from Jonathan Gray and typically mailed that cocaine to Gerald Williams in Minnesota for distribution.[22] Evans also testified that Gray informed him in 1993 that he was obtaining his cocaine from Vignali.[23] Evans first met Vignali sometime during the summer of 1993 when they discussed distributing cocaine and agreed on prices.[24]

Evans also testified that Todd Hopson, one of the Minneapolis-based cocaine distributors, flew to Los Angeles around October 20, 1993, and met with Evans and Vignali, and Vignali agreed to sell Hopson cocaine.[25] Hopson, Evans, and a friend of Evans then followed Vignali to an East Los Angeles apartment where Hopson bought between $36,000 and $70,000 of cocaine from Vignali.[26] Evans testified that prior to leaving Los Angeles for Minnesota, he made arrangements with Carlos Vignali and Jonathan Gray to have an additional six kilograms of cocaine sent to the residence of Todd Hopson's relative in Minnesota.[27]

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[20] *Id.* at 115–16.

[21] On appeal, co-defendant Todd Hopson argued that those comments made by Vignali's attorney were so prejudicial that he was entitled to a new trial. *U.S. v. Williams,* 97 F.3d 240, 244 (8th Cir. 1996). However, the appellate court found that Hopson failed to show prejudice. In particular, the court observed that the jury's verdict indicated that it declined any invitation to use race as a proxy for guilt. In support of that view, the court cited the jury's acquittal of co-defendant Claude Phillips, an African-American, and its conviction of Vignali, a Hispanic, on three of four counts.

[22] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 16, 1994) at 86.

[23] *Id.* at 100.

[24] *Id.* at 101.

[25] *Id.* at 119.

[26] *Id.* at 120–21.

[27] *Id.* at 137–43. Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 10–12 (Evans testifying that he planned with Ronald Nunn to pick up Hopson and collect a parcel mailed by Vignali at the residence of Hopson's relative in Egan, Minnesota).

On October 21, 1993, officers conducted surveillance on Evans, Ronald Nunn, and Todd Hopson.[28] In the course of that surveillance, officers observed Ronald Nunn picking up Evans at Gerald Williams' apartment in Minneapolis.[29] Nunn and Evans then drove to Hopson's home in Apple Valley, Minnesota, picked him up, and went to the drop-off location in Eagan, Minnesota.[30] They picked up a large parcel and returned with it to the Apple Valley residence.[31] Evans, Nunn, and Hopson detected police surveillance while driving and attempted evasive maneuvers.[32] After Evans noticed that he was being tailed by undercover surveillance, he paged Vignali and Gray in Los Angeles from his cell phone with the emergency code "911." After he had managed to shake off his pursuers, Evans spoke with Gray and Vignali. They did not realize that their conversation was being monitored by the police. Evans told Vignali that "[t]hey followed us all around."[33] He further stated that "[w]e had to shake them, get them off, one in front, back one came, parked down the street, waiting for us, dog, undercrizzovers."[34] Evans testified that by "undercrizzovers" he was referring to undercover police and was conveying that he was being chased by the police.[35] Evans also told Vignali that he had to start "busting uturns" to evade the police.[36] In response to Evans' report, Vignali asked, "Is that right? So everything's cool, though?"[37] Vignali later asked Evans, "How long ago was this?"[38] As Evans was continuing to talk to Vignali about the "undercrizzovers," Vignali asked, "Hey, but, you, you, you, um, you made everything straight, right?"[39] Vignali also asked, "Don't you think you should be careful before you bust a move?"[40] Evans responded, "that's what I'm doing."[41] Vignali later paged Evans to determine whether Evans was arrested.

At trial, Vignali contended that, during his conversation with Evans, he did not know what Evans meant by "undercrizzovers" and that he was disoriented because Evans' call had woken him.[42] Vignali testified that he inferred only that "something was wrong" with a $20,000 "business loan" that he supplied to Jonathan

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[28] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 14, 1994) at 184–86 (testimony of Officer Tony Adams).
[29] *Id.*
[30] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 16 (testimony of Dale Evans).
[31] *Id.*
[32] *Id.* at 14 (Evans testifying that Nunn detected undercover police surveillance).
[33] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 51 (testimony of Dale Evans); Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 204 (Vignali testifying that Evans paged him "911").
[34] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 51.
[35] *Id.* at 51, 56 (testifying that he later described to Vignali, "They were following us, riding and shining").
[36] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 276.
[37] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 51.
[38] *Id.* at 52.
[39] *Id.*
[40] *Id.* at 53.
[41] *Id.* at 54.
[42] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 204.

Gray[43] and that Evans either lost or someone stole that money.[44] At trial, prosecutors pointed out that Vignali's defense made no sense. Though he claimed to be confused and "freshly woken up," Vignali cautioned his friend to "be careful" and asked if "everything was cool." The trial transcript makes it clear that Vignali's defense was implausible:

> DUNNE. I thought that you said, on direct examination, that you didn't understand what he meant by under crizzovers because you had just gotten up?
>
> VIGNALI. Yes, he, he had just woken me up with the page, sir.
>
> DUNNE. Okay. And you will agree with me, will you not, that the time on this transcript [is 12:09 p.m.], Minneapolis time?[45]
>
> * * *
>
> DUNNE. You say, when Dale gives you the explanation about the under crizzovers . . . "Is that right?"
>
> VIGNALI. Yes.
>
> DUNNE. Do you say—you don't say to him, "Dale what are you talking about?"
>
> VIGNALI. No.
>
> DUNNE. Okay. And you don't say, "I don't understand this?"
>
> VIGNALI. No, sir. Bear in mind that I, I had just freshly woken up.[46]
>
> * * *
>
> DUNNE. Now you just said that the reason you called . . . [was] that you were concerned about your money?
>
> VIGNALI. Yes sir.
>
> DUNNE. Concerned enough to say Don't you think you should be careful before you bust a move?

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[43] Vignali claimed that Gray had told him that he needed $20,000 for a short-term business deal involving Stacy Augmon and several other professional basketball players. Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 248–49 (cross examination of Carlos Vignali); Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 1, 1994) at 39–40 (direct examination by Horacio Vignali); Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 232 (closing argument of Carlos Vignali).

According to Vignali, Gray assured him that he would get $25,000 back in a matter of days and that, if the deal fell through, Gray would sell his Porsche to cover Vignali's losses. Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 192–93. Vignali claimed that he had $20,000 in cash to loan Gray because he had saved his allowance since he was a young child and that the resulting stack of $100 bills, which he had ironed and carefully stacked in his closet, represented his "life savings." *See* Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 1, 1994) at 40–43. According to Vignali, Gray returned to him the $20,000 and an additional $5,000. *See* Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 188. Also, according to Vignali, a second "business loan" was made when Vignali "loaned" Gray $25,000, which, with $5,000 interest, resulted in the $30,000 referred to on the tapes. *Id.* at 192–95, 273–75.

[44] *Id.* at 173, 204, 259; Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 232.

[45] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 269–70.

[46] *Id.* at 273.

VIGNALI. Yes sir.

DUNNE. But you don't ask him what the problem is?

VIGNALI. I, I have a little understanding that something wrong is going on, but I'm not exactly sure, he didn't make it clear to me.[47]

* * *

DUNNE. What do you mean, something is going wrong?

VIGNALI. I have no idea. I wasn't there.

DUNNE. What did you think was going wrong with your 25,000 dollars?

VIGNALI. I have no idea.

DUNNE. You have no idea?

VIGNALI. No, sir. I thought maybe, when he told me that it was smashing, maybe something was following him trying—maybe trying to carjack him or something, I don't know—and then he was going to try to tell me, Well I lost your money, or something. I was just concerned about, in that aspect.[48]

* * *

DUNNE. Now let me ask you, during this phone conversation where you are concerned about Dale's busting a move with your 25,000 dollars because someone might carjack him. Do you ever tell Dale: Dale, maybe you should call the police if someone is trying to carjack you?

VIGNALI. I, I didn't, again I will tell you I didn't know exactly what was going on.

DUNNE. But you thought somebody was trying to carjack him?

VIGNALI. It was, it was the morning. I'm—my head—I had just woken up, I wasn't—it—nothing was clear to me, it never was clear to me.[49]

Evans testified that he returned to California the day after he escaped the undercover surveillance.[50] But, before returning to California, he mailed himself the money he obtained for the cocaine.[51] Evans told Vignali and Jonathan Gray in intercepted telephone conversations that he would meet with them to give them the money.[52]

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[47] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 30, 1994) at 10–11.
[48] *Id.* at 12–13.
[49] *Id.* at 13.
[50] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 56.
[51] *Id.* at 56.
[52] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 14, 1994) at 189, 193 (Officer Tony Adams); Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 56–58 (Evans testifying that he received money he mailed to himself in California and took about $80,000 or $90,000 to Vignali and Gray at Vignali's house).

On October 26, 1993, agents tapped into a phone conversation between Dale Evans and Gerald Williams regarding a new shipment of cocaine, six kilograms sent from Los Angeles to Ronald Nunn's Minnesota home.[53] That shipment was intercepted by postal inspectors on or about October 28, 1993.[54] On October 31, 1993, agents overheard a call between Williams, Evans, and Carlos Vignali regarding the October 26th shipment. Evans asked, "Love [the cocaine shipment] never got there?"[55] Williams replied, "no."[56] Evans stated that they had called the post office to see if the package had arrived.[57] At that point, Vignali, who was apparently with Evans, got on the telephone, said "[t]his is the other end," and told Williams to send somebody into the post office to find out about the package.[58] Vignali then said, "We sent that right down that day" and told Williams to get on "good horns [a public telephone]."[59]

During that conversation, a prospective 15-kilogram deal was discussed.[60] The parties conferred about whether the quantity should be broken up into one or two kilogram shipments or shipped all at once.[61] They also discussed the prospect that the buyers might not want to pay for the shipment up front before obtaining all of their cocaine.[62] They further discussed having someone either drive the shipment from California to Minnesota or having someone come down from Minnesota to California.[63]

In attempting to explain away these conversations, Vignali argued that the money referred to "life savings" he accumulated as a child from his father and ultimately "lent" to Jonathan Gray. Vignali supposedly lent Gray, who had been recently released from jail for a crime Vignali knew nothing about, a $20,000 "business loan" for a project which Vignali also knew nothing about. This part of Vignali's story met with skepticism from prosecutors:

> DUNNE. Now when you gave Jonathon [Gray] this 20,000 dollars for this loan . . . for this business proposition or whatever, did he show you any kind of contract?
>
> VIGNALI. No, he didn't.
>
> DUNNE. Did he show you any kind of paperwork about this business proposition?
>
> VIGNALI. No, he did not.
>
> DUNNE. Did he have you sign anything to validate that you were giving him 20,000 dollars in cash?
>
> VIGNALI. No, sir.

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[53] Transcript of Trial, *U.S. v. Vignali*, (D. Minn. Nov. 22, 1994) at 70 (Evans); Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 59–60, 64–66 (Evans testifying to conversation). *See also* Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 57–58 (Exhibit 2).

[54] *Id.* at para. 65.

[55] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 69. "Love" was the code word used by the conspirators to refer to cocaine.

[56] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 164. *See also* Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 66–68.

[57] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 164.

[58] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 22, 1994) at 70–71.

[59] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 17, 1994) at 68.

[60] *Id.* at 75–76.

[61] *Id.* at 76.

[62] *Id.*

[63] *Id.* at 76–77. That transaction appears not to have been consummated.

* * *

DUNNE. And do you recall how much money was in your checking account at the time you had 20,000 dollars in a safe in your house?

VIGNALI. No, I never, I never kept much money . . . in the bank, I'm sorry.

DUNNE. Well, when you have money in a bank you earn interest. Right?

VIGNALI. If it is in your savings account, yes.

DUNNE. Are you earning any interest on 20,000 dollars in a safe in your house?

VIGNALI. No, but it is in my possession.[64]

* * *

DUNNE. In 1992 you file an income tax return where you declared your income was thirteen thousand nine hundred nine dollars? . . . Now the 20,000 dollars that you had in the closet at home, was that part of the thirteen thousand dollars that you made in 1992?

VIGNALI. That was part of the money that I had accumulated over my lifetime.

DUNNE. Over your lifetime?

VIGNALI. Absolutely.

DUNNE. Okay. And so all of your life savings you put in . . . the closet in the townhome.[65]

Rather than refute the facts prosecutors had marshaled against him, Vignali argued that the co-conspirators who cooperated with law enforcement made "sweetheart" deals for leniency. In particular, Vignali charged that Dale Evans had falsely identified Vignali as his source of cocaine in California because he wanted to conceal the involvement of his family members and close associates in criminal activity.[66] Nonetheless, the testimony of the cooperating co-conspirators and law enforcement officers and the corroborating physical evidence was overwhelming. The combination of evidence admitted at trial showed beyond a reasonable doubt that Vignali supplied significant quantities of cocaine from California for distribution in Minnesota.

On December 12, 1994, Vignali was convicted of all the crimes for which he was indicted, except one count of using facilities in interstate commerce for the promotion of his drug operation.[67] All but one of the original thirty defendants in the drug conspiracy ei-

[64] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 240, 243.
[65] *Id.* at 247–48.
[66] Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 232.
[67] Judgment in a Criminal Case, *U.S. v. Vignali* (D.Minn. July 17, 1995) (Exhibit 3).

ther pleaded guilty or were convicted.[68] At sentencing, the probation office for the federal district of Minnesota submitted to Judge David S. Doty a pre-sentence report. This report recommended an imprisonment range of 151 to 188 months for Vignali.[69] In determining the proper sentence under the federal sentencing guidelines, Judge Doty found that Vignali was, in fact, a willing participant in the shipment of cocaine to Minnesota on October 20, 1993.[70] Judge Doty also found that Vignali was accountable for distributing between five and fifteen kilograms of cocaine, rather than the fifteen to fifty kilograms suggested in the pre-sentence report.[71] Vignali was sentenced to imprisonment for 175 months, about 15 years, on July 17, 1995.[72] On January 20, 2001, President Clinton commuted Vignali's sentence to time served.

B. Vignali's Efforts to Obtain Executive Clemency

As described below, 55-year old Horacio Carlos Vignali, a successful Los Angeles-area businessman,[73] apparently used every tool at his disposal to see that his son would not fully serve out his prison sentence. When attempts to have his son released before sentencing and on appeal failed, Horacio, who cultivated political contacts over time through substantial campaign donations, fundraising activity,[74] and civic involvement, directed his considerable resources to a concerted effort to lobby President Clinton for an eleventh hour pardon of his son.

1. Initial Efforts to Reduce Vignali's Sentence

a. Contacts with Prosecutors in Minnesota

Efforts to reduce Carlos Vignali's sentence apparently started soon after Vignali was convicted. According to Assistant U.S. Attorney Andrew Dunne, who prosecuted Vignali in Minneapolis, Vignali's political associates exerted "a lot of influence" in Vignali's sentencing.[75] Dunne explained that he and the other prosecutors working on the case received periodic calls from state representatives in California on behalf of Carlos Vignali after the sentenc-

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[68] *Id.* Claude Phillips, 50, of Memphis, Tennessee, was acquitted of conspiring to distribute cocaine—the sole count against him in the superceding indictment. Also convicted was Todd Hopson, 23, of Apple Valley, Minnesota.

[69] *Id.*

[70] *Id.* Judge Doty also found that, in late October, co-defendant Todd Hopson traveled to California and co-defendant Dale Evans arranged for Hopson to buy additional quantities of cocaine from Vignali.

[71] *Id.* Judge Doty did so by referring to the testimony of co-defendant Dale Evans. According to Evans, Vignali may have been the source of two packages of cocaine sent to Minnesota—one on October 21, 1993, and the other on October 28, 1993. Judge Doty noted that the second package was, in fact, seized by law enforcement authorities and found to have contained six kilograms of cocaine, and Evans testified at trial that the first package contained four kilograms of cocaine. However, Judge Doty found Evans' testimony regarding the sale of additional quantities of cocaine by Vignali unpersuasive.

[72] *Id.*

[73] Horacio Vignali, who immigrated to the United States in 1962, has owned several businesses, including parking lots, body shops, and real estate. *See* Richard Serrano and Stephen Braun, *Working the American System*, L.A. TIMES (L.A. TIMES MAG.) Apr. 29, 2001, at 10. Apparently, Horacio Vignali has been financially successful and owns a $9 million home in Pacific Palisades that apparently once belonged to Sylvester Stallone. *Id.*

[74] For example, Horacio Vignali has hosted several political fundraisers, including outdoor barbecue fundraisers (for which he became locally well known), and provided food for various political events. *Id.*

[75] Richard A. Serrano and Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. TIMES, Feb. 11, 2001, at A1.

ing.[76] Characterizing some of the calls as "perhaps improper influence," Dunne recalled that "they wanted to know: Is there anything that could be done to help reduce the sentence?"[77] Denise Reilly, the lead government prosecutor in the Vignali case, likewise confirmed that they "would get calls from different people—politically placed" throughout the course of the case.[78] She characterized the input of those who called "odd," stating "I don't know how they do things in the rest of the country, but that isn't what we do in Minnesota."[79] Judge Reilly described the incoming calls as inquiring, "are you sure you know what you're doing?" and "are you sure that you have the right person?"[80] Judge Reilly believed that the calls came from political officials in Los Angeles.[81]

b. Vignali's Appeal

Carlos Vignali appealed his conviction immediately after the verdict. Vignali appealed to the Eighth Circuit Court of Appeals, claiming juror misconduct, witness perjury, improper jury instruction, failure to grant a severance, and improper exclusion of defense evidence. A unanimous appellate court upheld Vignali's conviction, dismissing Vignali's arguments with minimal discussion.[82] In affirming the district court's ruling, the appellate court agreed that "there was considerable evidence of Vignali's guilt."[83] Vignali subsequently sought habeas relief, asserting ineffectiveness of counsel.[84] This claim was also denied.[85]

c. Letters to the White House and Justice Department

Horacio Vignali was hard at work gathering political support for his son's cause even before filing his son's clemency petition. Vignali had a number of prominent California politicians write letters to the White House in 1996, requesting a "review" of Carlos Vignali's case. At least five similarly phrased letters were sent to the White House "Pardon Secretary" requesting an examination of the case.[86]

The first letter, dated May 24, 1996, from California Assembly Member Antonio Villaraigosa, stated, "After reviewing Mr. Vignali's case, I am convinced that he has been falsely linked to a drug ring in Minneapolis, MN, and that his conviction is a product of 'guilt by association,' among other factors."[87] Villaraigosa noted that Carlos Vignali had no prior record and that Vignali's "military

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[76] *Id.*
[77] *Id.*
[78] Telephone Interview with the Honorable Denise Reilly, Juvenile Court Judge, 4th Judicial District of Minnesota (Hennepin County) (May 11, 2001).
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *U.S. v. Williams,* 97 F.3d 240 (8th Cir. 1996).
[83] *Id.* at 246.
[84] NARA Document Production at 2 (Report to the President on Proposed Denial of Executive Clemency for Carlos Anibal Vignali, Jr. (Jan. 12, 2001)) (Exhibit 4).
[85] *Id.*
[86] There is no position of "Pardon Secretary" at the White House. It is not clear who received and reviewed these letters when they were sent to the White House in 1996. However, the letters were ultimately made part of the Vignali clemency file at the White House Counsel's Office years later in 2000.
[87] NARA Document Production (Letter from Antonio R. Villaraigosa, Assembly Member, Forty-Fifth District, California Legislative Assembly, to Pardon Secretary, the White House (May 24, 1996)) (Exhibit 5).

academy schooling adds to his superior resumé." [88] Villaraigosa was apparently unaware that Vignali both had a prior criminal record and had dropped out of military school.[89] Under those circumstances, Villaraigosa's characterization of Vignali's resumé as "superior" was, at best, hyperbole and, at worst, misleading. Villaraigosa has since admitted that he did not independently investigate the details of Carlos Vignali's case and regretted not having done so.[90] Villaraigosa stated, "I was convinced at the time . . . that his son was not a major player in this drug ring. I made a mistake in not investigating." [91] Villaraigosa stated that he was moved by Horacio Vignali's emotional plea: "It was a conversation between fathers as much as anything. . . . He was very distraught." [92]

On May 28, 1996, Los Angeles City Councilman Richard Alatorre wrote in support of Vignali:

> It is difficult for me to understand why Mr. Vignali received such an exorbitant sentence. It has been pointed out that this may have been due to the fact that his case was grouped together with a much larger case involving the sale of drugs. Others contend that it may have been because of his Latino background, which I hope is not the case.[93]

However, Alatorre was not fit to provide a character reference for Vignali or anyone else. Throughout his extensive career in Los Angeles politics, Alatorre was the subject of various public corruption investigations, recently pleaded guilty to federal tax evasion charges, and is himself a proven cocaine user.[94]

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[88] *Id.*

[89] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 130 (Exhibit 2).

[90] Mateo Gold, *Vignali Case Casts Shadow over Mayor's Race*, L.A. TIMES, Feb. 28, 2001, at B1 ("I wrote that letter without talking to prosecutors on the other end.").

[91] John Antczak, *L.A. Heads Retract Support for Pardon*, AP ONLINE, Feb. 13, 2001; *See also* Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at A22.

[92] Matea Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at A22. It is widely believed that Villaraigosa's involvement in the Vignali matter cost him his election as mayor of Los Angeles to Robert Hahn. *See, e.g.*, Beth Barrett, *Villaraigosa's Refusal to Hit Back Cost Him—Rival's Attack Went Unanswered*, DAILY NEWS OF L.A., June 7, 2001, at N9.

[93] NARA Document Production (Letter from Richard Alatorre, Councilman, Fourteenth District, L.A. City Council, to Pardon Secretary, the White House (May 28, 1996)) (Exhibit 6).

[94] Department of Justice Press Release No. 01–062, *Former Los Angeles City Councilman Richard Alatorre Charged with Tax Evasion for Failing to Report Bribes; Defendant Agrees to Plead Guilty to Felony Offense*, U.S. Attorney's Office for the Central District of California, Apr. 3, 2001. As a result of Alatorre's failing to report bribes, he evaded the payment of at least $12,970 in federal income tax. In addition to pleading guilty, Alatorre has agreed to file an amended 1996 federal income tax return and to pay any penalties and interest assessed by the Internal Revenue Service.

Less than a year after being elected to the Los Angeles City Council, Alatorre agreed to pay a record fine of more than $140,000 for improperly financing his campaign for City Council with money he raised as a state lawmaker. Rich Connell and Robert J. Lopez, *Alatorre's Fall Belies Early Promise, Achievements*, L.A. TIMES, Jan. 17, 1999, at Al. In 1988, Alatorre was fined for attempting to steer a $722,000 contract to The East Los Angeles Community Union ("TELACU"), a firm that was headed by a longtime friend. Earlier, TELACU had flown Alatorre to a meeting at Lake Tahoe and paid him a $1,000 speaking fee.

When Alatorre was on the board of the Metropolitan Transportation Authority ("MTA"), which administers Los Angeles' multibillion-dollar subway and light rail system, Alatorre reportedly solicited contributions of more than $500,000 from organizations with interests before the MTA and the City Council for the benefit of a children's charity he helped create. Rich Connell and Robert J. Lopez, *Alatorre's Fall Belies Early Promise, Achievements*, L.A. TIMES, Jan. 17, 1999, at Al; Robert J. Lopez and Rich Connell, *MTA Probes Charities Promoted by Alatorre*, L.A.

On July 22, 1996, State Senator Richard Polanco requested that the White House "carefully review" the Vignali case and stated that Vignali had "no prior criminal record."[95] On July 26, 1996, Archbishop Roger Mahony, Cardinal of the Archdiocese of Los Angeles, wrote to "add [his] voice recommending that all of the process, the law, and the facts in this case be reviewed fully to determine if justice has been achieved[.]"[96] Finally, Congressman Esteban Torres wrote to Attorney General Reno complaining that Vignali was not "individually tried before a jury of his peers" and asking that the Attorney General "carefully review" Vignali's case.[97]

TIMES, July 7, 1997, at Al. That charity exclusively hired Eventually Yours, an event-planning firm founded by Alatorre's third wife, Angie, paying the firm tens of thousands of dollars in fees. Ultimately, Alatorre was fined $8,000 by state and local watchdog agencies for improperly intervening on behalf of the firm before a city licensing agency. That was the maximum fine allowed under state and local laws. Also, in the custody dispute described below, Alatorre conceded to receiving a $13,200 loan (without a repayment plan) from TELACU. At that time, Alatorre was also supporting a TELACU team for a $65 million MTA subway contract and a TELACU partnership for a $2 million city development for a shopping center in his district.

The investigation of Eventually Yours broadened an earlier probe of how another firm that was ranked last in competing for a lucrative subway contract, but which Alatorre backed, came to be recommended for that contract. Robert J. Lopez and Rich Connell, *MTA Probes Charities Promoted by Alatorre*, L.A. TIMES, July 7, 1997, at Al. That controversy resulted in the resignation of MTA's executive director, who selected the team after it made a $20,000 donation to a golf tournament benefiting a charity of which Alatorre was an honorary chairman.

Eventually Yours was also investigated by the California Attorney General's Office for failing to account for hundreds of thousands of dollars in charitable donations it helped raise. Robert J. Lopez and Rich Connell, *MTA Probes Charities Promoted by Alatorre*, L.A. TIMES, July 7, 1997, at Al. After repeated press inquiries for information regarding the firm's five-year failure to account for certain contributions, the firm's attorney stated that the firm's forte was in staging "spectacular" events—not in faithfully tending to administrative matters. In the course of its investigation, the State Attorney General's Office received an inquiry from State Senator Richard Polanco, generally well known to be an Alatorre ally. According to a State Justice Department official, Polanco stated that he was concerned about the pressure being brought to bear on the firm. The official recounted that Polanco said he knew the people associated with Eventually Yours to be upstanding and asked why they were targeted. In response, Polanco was told that, because the investigation was pending, he could be given no information about the matter. Robert J. Lopez and Rich Connell, *MTA Probes Charities Promoted by Alatorre*, L.A. TIMES, July 7, 1997, at Al.

In the course of a child custody dispute regarding his niece in which Alatorre's competency to care for the girl was in controversy, Superior Court Judge Henry W. Shatford found that "Richard Alatorre's credibility has been totally shredded as to his profound declaration [that] he has been clean from the use of cocaine." Robert J. Lopez and Rich Connell, *Judge Says Test Shows Alatorre Is Using Cocaine*, L.A. TIMES, Sept. 30, 1998, at Al. Judge Shatford arrived at that finding after Alatorre failed a surprise courthouse drug test. The judge ordered the test after Alatorre repeatedly denied using cocaine with an individual on whose behalf he aggressively helped obtain government business. That individual was a waste hauler and demolition specialist who pleaded guilty to possessing and intending to distribute heroin. That individual has publicly stated that Alatorre has written him letters of reference for public contracts, "attesting to my character." Alatorre publicly explained that the white powder his former executive secretary testified to having seen on his nostrils and clothes upon his return from business meetings might have been dandruff, denture powder, or Doritos. Alatorre's former secretary also testified that, following Alatorre's divorce from his second wife when Alatorre was facing financial problems, he began mysteriously producing wads of $100 bills. The secretary claimed that some of the money came after meetings with businessmen and other supporters. After reviewing financial records involving associates of Alatorre with government business interests, Judge Shatford noted that Alatorre had "questionable conflict of interest financial dealings as a city councilman." *Id*. Ultimately, Judge Shatford stripped Alatorre of guardianship of his niece and barred him from visiting with her until he successfully completed a drug detoxification program.

[95] NARA Document Production (Letter from Richard Polanco, State Senator, Twenty-Second District, California Legislature, to Pardon Secretary, the White House (July 22, 1996)) (Exhibit 7).

[96] NARA Document Production (Letter from Archbishop Roger Mahony, Cardinal of the Archdiocese of Los Angeles, to Pardon Secretary, the White House (July 26, 1996)) (Exhibit 8).

[97] NARA Document Production (Letter from Esteban E. Torres, Member of Congress, U.S. House of Representatives, to Janet Reno, U.S. Attorney General, Department of Justice (July 3, 1996)) (Exhibit 9). Congressman Torres also wrote to the warden of Vignali's prison in Colorado, asking that Vignali be transferred to a prison closer to his family in California. Stephen Braun, *et. al*, *L.A. Politicians Urged Pardon of Cocaine Dealer*, L.A. TIMES, Feb. 12, 2001, at A1.

Even these initial stages of lobbying for Carlos Vignali involved a significant amount of misinformation. For example, Villaraigosa, Alatorre, Polanco, and Torres all claimed in their letters that Carlos Vignali had no prior criminal record. In fact, Vignali had two prior criminal convictions for fighting in a public place and vandalism and two prior arrests for reckless driving and inflicting corporal injury on a cohabitant.[98] It is unclear whether the political figures writing on Vignali's behalf were aware of Vignali's criminal history and chose to disregard it or were misinformed by those lobbying on Vignali's behalf.

Los Angeles City Councilman Richard Alatorre's claims of racial prejudice were similarly baseless. Alatorre claimed that "others contend" Vignali's sentence was the result of racial prejudice. However, the Committee is unaware of any allegations, other than Alatorre's own letter, that Vignali received unfair treatment because of his ethnic background. In fact, Vignali's attorney argued at trial that Vignali was innocent because he was Hispanic and, therefore, could not have been part of the "black drug dealing network" of his codefendants. Indeed, Vignali's black codefendants appealed their convictions on the basis of the potentially prejudicial statements by Vignali's lawyer.[99]

2. Vignali's Clemency Petition

After Carlos Vignali's appeal failed, the Vignali family began to pursue a grant of executive clemency to get him out of prison. Horacio Vignali initially reached out to Danny Davis, Carlos' criminal defense lawyer, to assist with efforts to obtain presidential clemency for him.[100] However, Davis, who represented Carlos Vignali at trial in Minnesota, declined because he calculated the probability of obtaining clemency for Carlos as "a snowball in Hades."[101] Sometime thereafter, Horacio Vignali himself embarked on a campaign to obtain a presidential grant of clemency for his son.[102]

Carlos Vignali's clemency petition was filed with the Justice Department on August 24, 1998. Vignali's brief petition laid out his reasons for seeking a commutation:

> Vignali loaned $25,000 to a friend, which were [sic] interpreted through slang taped telephone conversations to involve the purchase of drugs. No drugs were seized from Vignali, and he was convicted solely on the testimony of a codefendant who received leniency. The taped conversations did not mention either drugs or money but were interpreted to have those subjects. Vignali was tried in Minnesota where he had never been or had any significant contacts with.

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[98] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 117, 118 (Exhibit 2).
[99] *U.S. v. Williams*, 97 F.3d 240, 244 (8th Cir. 1996).
[100] Richard A. Serrano and Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. TIMES, Feb. 11, 2001.
[101] *Id.*
[102] *Id.*

* * *

> The sentence of 175 months for a 21 year old, first time, nonviolent offender with no significant prior record is unwarranted. Based solely on a $25,000 loan to a friend, falsely interpreted telephone recordings, and a codefendant's highly rewarded testimony, the punishment does not fit the crime as proved. The concept of holding minor players responsible for any and all drugs of a conspiracy, irregardless of whether that minor play [sic] had any knowledge or nexus with those drugs, undermines the concept of fairness. No drugs were introduced at trial as to Vignali, who never visited Minneapolis where the case was tried, yet he was held responsible for the drugs involved in a 30 defendant conspiracy, when he knew, at best, two people. By the end of 1998, Vignali will have served, with good time, almost five years, which is the mandatory minimum for the drugs which could have been bought with his loan.[103]

The Vignali clemency petition was a poorly drafted rehash of issues that had been thoroughly addressed at trial and on appeal. Unlike most successful clemency petitions, Vignali's petition continued to maintain actual innocence. Yet, it failed to present any new facts suggesting Vignali was indeed innocent. These flaws were easily recognized when the petition was reviewed by individuals familiar with the Vignali case. In short, the pardon petition made a number of misleading statements, including the following:

"Vignali loaned $25,000 to a friend, which were [sic] interpreted through slang taped [sic] telephone conversations to involve the purchase of drugs." Vignali's claim that he was simply engaged in a business deal—not a drug deal—was thoroughly disproved at trial. As described above, literally dozens of pieces of evidence pointed to Vignali's involvement in a drug deal, including the testimony of his co-conspirators, wiretap evidence, and the actual proceeds of the drug deal. In the course of reviewing Vignali's clemency application, the White House was apparently not persuaded by Vignali's explanation at trial. On the last page of a copy of the report from the Justice Department's Pardon Attorney to President Clinton declining to recommend Vignali's application for clemency, a handwritten note by a White House staffer reads "Need to XC for Bruce [Lindsey]. Definitely isn't simply making a loan[.]" [104]

"[Vignali] was convicted solely on the testimony of a codefendant who received leniency." As described above, the testimony of *several* witnesses proved Vignali's role in the conspiracy. The testimony of those witnesses was consistent with and independently corroborated by wiretap interceptions of communications among the co-conspirators, search warrant evidence obtained from lawful searches of the co-defendant's homes and drug stash houses, and visual police surveillance. Thus, as the Eighth Circuit noted on di-

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[103] NARA Document Production (Petition for Commutation of Sentence) (Exhibit 10).

[104] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Carlos Anibal Vignali, Jr.) at 4 (Exhibit 4) (handwritten note on last page of Report).

rect appeal, Vignali's conviction was supported by considerable evidence.

Agreements with defendants for cooperation in exchange for leniency at sentencing are a widely-used tool used by prosecutors to obtain evidence in criminal cases. Such agreements are contemplated by the Federal Sentencing Guidelines as a basis for downward departure from the applicable guideline imprisonment range. Moreover, Vignali's sentence was commuted to a term shorter than even those of defendants who actually cooperated with the Government. This makes the clemency decision particularly egregious.

"Vignali was tried in Minnesota where he had never been or had any significant contacts with." This is a red herring. Physical presence within the district where a criminal defendant is to be tried has never been held to be a requirement in determining venue. It is well-settled that the appropriate focus for determining venue is the place of the crime and that the inquiry into the place of the crime may yield more than one appropriate venue or even a venue in which the defendant has never set foot.[105] In this case, Vignali was charged with, among other things, aiding and abetting the distribution of cocaine using facilities in interstate commerce and conspiring to distribute cocaine. As described above, the evidence that Vignali facilitated the interstate sale of cocaine and conspired in Los Angeles to distribute cocaine in Minnesota included testimony of cooperating co-defendants (which was corroborated by wiretapped communications among the co-conspirators), search warrant evidence, and visual police surveillance. That evidence amply showed an interdependence between Vignali and the Minnesota-area distributors. Therefore, under prevailing case law, venue in the U.S. District of Minnesota was clearly proper.

"The sentence of 175 months for a 21-year old, first time, nonviolent offender with no prior record is unwarranted." First, Vignali was not a "first time, nonviolent offender." Vignali's counsel, Danny Davis, similarly misrepresented Vignali's criminal record when he told the jury in closing argument that Vignali had "[n]o prior criminal record" and cited "his unblemished past."[106] Hugh Rodham, who was retained to lobby the White House on Vignali's behalf, likewise misrepresented Vignali's criminal record to the White House Counsel's Office. In fact, Vignali had two prior convictions and arrests. He was convicted in 1989 for fighting in a public place and received a $183 fine. He was also convicted of vandalism to which he pleaded no contest and received 12 months probation and was ordered to pay restitution and complete 82 hours of community service work. In the course of his arrest for vandalism, Vignali stated that he was associated with "The 87th Street West Side Boys" in Los Angeles.[107] According to police records, Vignali also admitted that he was a member of the West Covina Mob.[108] In 1988, Vignali was arrested for reckless driving.[109] Finally, Vignali was arrested in 1990 for inflicting corporal injury on a spouse/cohabitant, but that case was dismissed. Second, Vignali's sentence re-

[105] *U.S. v. Cabrales,* 524 U.S. 1 (1998); *U.S. v. Stewart,* 256 F.3d 231 (4th Cir. 2001).
[106] *See* Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 5, 1994) at 229–30.
[107] Presentence Investigation, *U.S. v. Vignali* (D. Minn. 1994) at para. 117, 118 (Exhibit 2).
[108] *Id.* at para. 117–18.
[109] *Id.*

flected the gravity of his participation in a large-scale conspiracy in which he served as the source of cocaine. It also reflected both Vignali's obstruction of justice in lying about his actual role in the conspiracy before a judicial tribunal and his obdurate refusal to accept any responsibility for his crimes.

"No drugs were introduced at trial as to Vignali[.]" Although this assertion appears to be true from the trial record, the implication that Vignali's verdict is therefore unsupported by sufficient evidence is misleading. In fact, the appellate court noted that Vignali's verdict was well-supported by the evidence admitted at trial. In sentencing Vignali under the federal sentencing guidelines, the trial judge determined how much cocaine was attributable to Vignali. Because the parcels of cocaine attributable to Vignali had long since been distributed or consumed, the judge looked to the testimony of co-defendant Dale Evans. According to Evans, Vignali was the source of two packages of cocaine sent to Minnesota, one on October 21, 1993, and the other on or about October 28, 1993. The judge found that Evans' testimony as to the amount of cocaine in the second package was corroborated by the postal inspector's seizure of the parcel and finding that it contained six kilograms of cocaine. In contrast, the judge found that Evans' uncorroborated testimony as to additional quantities of cocaine was not reliable. Nonetheless, he found that Evans' testimony was credible so as to establish that Vignali knowingly participated in distributing cocaine on more than one occasion. Given the strength of the available evidence, the judge's determination that between five and fifteen kilograms of cocaine were attributable to Vignali did not require the physical presence of those parcels in court.

"[Vignali] was held responsible for the drugs involved in a 30 defendant [sic] conspiracy, when he knew, at best, two people." The evidence admitted at trial against Vignali showed that he was a member of a large-scale drug conspiracy and facilitated the distribution of cocaine in Minnesota by supplying Dale Evans, Gerald Williams, and Todd Hopson with significant quantities of cocaine from Los Angeles. As such, Evans' association with the other members of the conspiracy was irrelevant to any issue material to the government's case.

The facts prove that every substantive assertion in Vignali's commutation petition was false and misleading. The petition could have been easily refuted by anyone with a basic familiarity with Vignali's underlying conviction. The question then is how the White House came to believe that Carlos Vignali deserved an executive grant of clemency.

3. Supporters of Vignali's Clemency Petition

In 2000, a number of prominent California politicians wrote to the White House in support of Vignali's release. Some were the same individuals who wrote to the White House on Vignali's behalf four years earlier. In addition, a number of prominent Californians called the White House and the Justice Department to further press their arguments. The distortions of fact in the Vignali clemency petition were repeated throughout the campaign to win Vignali's release.

a. Letters of Support from Prominent California Politicians

It appears that from the earliest stages of his efforts to obtain a commutation for his son, Horacio Vignali attempted to enlist the support of various state and federal politicians and other prominent Californians. By the time that the White House reviewed Vignali's clemency petition in January 2001, seven different political figures had drafted letters to the White House or Justice Department in support of Carlos Vignali's petition. Horacio Vignali apparently used a number of different tactics to convince these individuals to sign onto his cause.

Perhaps most significantly, Horacio Vignali became a major political contributor to top federal, state, and local officeholders after his son was convicted in 1994.[110] This made him a well-known figure in the Los Angeles political community. Horacio Vignali contributed reportedly more than $160,000 to state and federal office holders after his son was incarcerated.[111] He reportedly gave $25,000 to former Governor Pete Wilson in 1994 and held a fundraiser for Governor Gray Davis in 2000 that raised $75,000, including $25,900 from himself.[112] Horacio Vignali also reportedly gave $23,500 to Davis before he became Governor[113] and $35,000 to the Democratic Party.[114] In addition, he made large contributions to a number of Los Angeles city and county officials and held fundraisers and other political events at his Los Angeles estate. While these contributions clearly gave Vignali the access he needed to make his case to key political figures, it is less clear why his case was received so positively. Most of the politicians who endorsed Carlos Vignali's clemency petition now admit that their actions were a mistake and claim that they took the positions they did out of a misplaced sympathy for a father who was deeply hurt by his son's imprisonment.

i. Congressman Xavier Becerra

Congressman Becerra conceded that the Vignalis were not members of his constituency but that Horacio had been a friend and contributor of his for five years.[115] The Vignalis have donated at least $11,000 to Becerra's political action committee, Leadership of Today and Tomorrow, between 1998 and 2001,[116] $2,475 to

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[110] *Did Politics Sway Clinton to Free Drug Dealer,* L.A. TIMES, Feb. 13, 2001, at A8.

[111] Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at 22; Rob Morse, *Still Have Bill to Kick Around*, S.F. CHRON., Feb. 14, 2001, at A2; Dominic Berbeo, *Hertzberg Had Part in Pardon Flap*, DAILY NEWS OF L.A. (Valley Edition) Feb. 16, 2001, at N1.

[112] Ted Rohrlich and Robert Lopez, *Convict's Father a Wealthy, Well-Liked Mediator on the L.A. Political Scene; Profile: Horacio Carlos Vignali Has Donated Thousands Across Party Lines. He Puts Emphasis on Strengthening the Latino Community, Aides Say*, L.A. TIMES, Feb. 13, 2001, at A23.

[113] *Id.*

[114] Dominic Berbeo, *Hertzberg Had Part in Pardon Flap*, DAILY NEWS OF L.A. (Valley Edition) Feb. 16, 2001, at N1.

[115] *Id.*

[116] *Id.* Dominic Berbeo, *Hertzberg Had Part in Pardon Flap*, DAILY NEWS OF L.A. (Valley Edition) Feb. 16, 2001, at N1.

Becerra's congressional campaigns, and $3,500 to Becerra for the mayor's race.[117]

Congressman Becerra has explained to the press that he was initially approached by Horacio Vignali and Congressman Esteban Torres, who wanted to see if Becerra could assist the Vignali family.[118] After Horacio Vignali asked for Becerra's help, Becerra called the U.S. Attorney for the Central District of California, Alejandro Mayorkas.[119] Becerra asked Mayorkas about the case and whether a commutation could be granted. Becerra recalls that Mayorkas looked into the case and called him back a few days later, telling him that the conviction was justified but that the sentence was too harsh.[120]

Becerra also called Pardon Attorney Roger Adams about the Vignali case.[121] Becerra apparently called Adams on October 13, 1998, asking about the procedures followed by the Office of the Pardon Attorney. On October 14, 1998, Adams sent Becerra a lengthy letter explaining the conditions under which the Office of the Pardon Attorney considered cases for commutation. Adams noted that "commutation of sentence is usually recommended only in exceptional circumstances, such as unwarranted disparity or severity of sentence, the rendering of an important service to the government not taken into account at sentencing, or terminal illness. . . . Since President Clinton has been in office, he has granted clemency only in three commutation cases." [122]

Becerra then drafted a letter to the White House in support of Vignali. On November 21, 2000, Becerra wrote the following to President Clinton:

> [I write to] add my voice to those recommending a full evaluation of this case to determine if justice has been achieved in the case of Mr. Vignali. . . . In the interest of redeeming the life of a young man, I respectfully urge you to weigh a few factors in Mr. Vignali's favor. Prior to Mr. Vignali's conviction, he had no criminal record whatsoever. Although convicted of drug possession and the illegal sale of drug narcotics, his parents remain highly disturbed by a variety of factors in play at Carlos' trial and believe that when Carlos loaned money to a friend he unwittingly became connected with the convicted narcotics ring. It is my understanding that neither drugs nor drug money was found in his possession.[123]

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[117] *Id.* Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at 22.

[118] *Id.*

[119] Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1.

[120] Richard Serrano and Stephen Braun, *Working the American System*, L.A. TIMES, Apr. 29, 2001, at A1.

[121] Interview with Roger Adams, Pardon Attorney, Department of Justice (Feb. 27, 2001). Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at A22.

[122] Justice Department Document Production Mayorkas 00029–30 (Letter from Roger Adams, Pardon Attorney, Department of Justice, to Xavier Becerra, Member of Congress, U.S. House of Representatives (Oct. 14, 1998)) (Exhibit 11).

[123] NARA Document Production (Letter from Xavier Becerra, Member of Congress, U.S. House of Representatives, to President William J. Clinton (Nov. 21, 2000)) (Exhibit 12).

After the commutation, Becerra explained his actions as follows: "Knowing that justice is not yet blind to color in America and with time running out for the review of the Vignali case, I added my voice to that of other community leaders . . . asking for a review of the case."[124]

Unlike others, Becerra has not apologized for his role in the Vignali case. Rather, he has steadfastly maintained that he did nothing wrong and did not even explicitly support Vignali's clemency grant. Becerra stated that he wrote the letters to urge the White House to make sure that justice had been served in the Vignali case.[125] He has said that he never specifically asked President Clinton to commute Carlos Vignali's sentence, despite the fact that he wrote about the case and even called the White House on January 19, 2001, to see where the case stood.[126]

ii. Congressman Esteban Torres

In addition to his 1996 letters to the Justice Department and the warden of Vignali's prison, Congressman Torres wrote to the White House in support of Vignali's clemency request. In an August 4, 1998, letter, Torres requested President Clinton's "careful review and immediate consideration of approval of his petition."[127] It is unclear why Torres wrote on Vignali's behalf.

Congressman Torres' son-in-law, James Casso, apparently became aware of the Vignali case while working as Congressman Torres' district director. More importantly, after Congressman Torres' retirement in 1999, Casso went into private practice as an attorney and apparently maintained his contacts with the Vignalis. In that capacity, Casso apparently played a significant role in introducing the Vignalis to Hugh Rodham. Unfortunately, Casso has declined to be interviewed by the Committee about this matter.

iii. State Senator Richard Polanco

State Senator Richard Polanco, who wrote to the White House "Pardon Secretary" in 1996, wrote to the President once again in 2000, specifically requesting a presidential grant of clemency for Vignali. Polanco, who received $20,000 in political contributions from Horacio Vignali throughout his career,[128] sent his letter to the White House on December 6, 2000. At the time, Polanco was the Chair of the Latino Legislative Caucus and purported to write on behalf of the Caucus:

> The Caucus respectfully requests you commute Mr. Vignali's sentence and that he be released immediately. We believe that Mr. Vignali was convicted despite the fact

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[124] Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at A22.

[125] Richard Serrano and Stephen Braun, *Working the System*, L.A. TIMES, Apr. 29, 2001, at A1.

[126] *Id.* Congressman Becerra's position should be contrasted with that of former Associate White House Counsel Meredith Cabe, who characterized the congressman's involvement as "advocacy." Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[127] NARA Document Production (Letter from Esteban E. Torres, Member of Congress, U.S. House of Representatives, to President William J. Clinton (Aug. 4, 1998)) (Exhibit 13).

[128] Antonio Olivo and Tina Daunt, *Speculation Swirls over Polanco Exit from Race*, L.A. TIMES, Mar. 11, 2001, at B1.

> that the criminal investigation did not reveal any guns, drugs, or illegal money in Mr. Vignali's possession. Mr. Vignali was a 22-year-old investor and did not have any contacts demonstrating his involvement in the sale or purchase of drugs.
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> * * *
>
> Given the facts of the case and Mr. Vignali's conduct during incarceration, the Caucus has investigated the impact of Mr. Vignali's release. We are convinced that Mr. Vignali will return to his family in southern California. Mr. Vignali's family is a loving, embracing family and is committed to supporting him.[129]

It is not clear whether Polanco obtained the approval of all 23 members of the California Latino Legislative Caucus before he wrote the President on their behalf. However, it is clear that Senator Polanco spread misleading information about Carlos Vignali in his letter. Rather than being an investor in a legitimate business enterprise, as suggested by Polanco, Vignali was convicted by a jury of providing large amounts of cocaine for distribution. His conviction was upheld by an appellate court. As for the lack of contacts demonstrating his involvement in the sale of drugs, as claimed by Polanco, Vignali's own words, captured on government wiretaps, show that he was part of a cocaine distribution conspiracy. Also of interest is Senator Polanco's claim that the Latino caucus had "investigated" the impact of Vignali's release. Polanco has not made it clear what steps he took to investigate the impact of the commutation. Given the inaccuracies in Polanco's letter, the Caucus' investigation appears to have been incomplete or, more likely, nonexistent.

iv. Los Angeles County Supervisor Gloria Molina

Unlike many other individuals who supported Vignali's bid for clemency, Los Angeles County Supervisor Gloria Molina did not receive political contributions from Horacio Vignali. Rather, she came to know Horacio Vignali through her husband, Ron Martinez, a Los Angeles affirmative action consultant.[130] After receiving a "constant barrage of requests" from Horacio to support his son's bid for clemency, Molina agreed to write such a letter.[131] In her December 20, 2000, letter, Molina stated the following:

> While I usually do not write letters in support of individuals I do not know personally, I am making this request because I do know Mr. Vignali's family and have reviewed his case carefully. What I have learned is that Mr. Vignali is a young man who made a mistake in his life and is im-

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[129] NARA Document Production (Letter from Senator Richard G. Polanco, Senate Majority Leader, California State Senate, to President William J. Clinton (Dec. 6, 2000)) (Exhibit 16).

[130] Ted Rohrlich, et. al, *Molina, Hertzberg Wrote Letters for Convict's Pardon*, L.A. TIMES, Feb. 16, 2001, at B1.

[131] *Id.*

> mensely remorseful and has demonstrated a genuine interest to re-join the community." [132]

Molina also noted Vignali's good record in prison, where he excelled in his work details and received a GED.[133] It is unclear how Molina came to the understanding that Carlos Vignali was "immensely remorseful" for his actions. To the contrary, Carlos and Horacio Vignali have steadily maintained Carlos' innocence ever since his arrest in 1994, and Carlos, to date, has never cooperated with authorities by revealing the identities of his narcotics sources.

Molina's ignorance of the most basic aspect of the Vignali case—whether Vignali claimed to be innocent or guilty of the charges—seriously undermines her claim to have "reviewed his case carefully." It has also been reported that Molina shared her draft letter of support with Horacio Vignali before it was provided to the White House.[134] Therefore, Horacio Vignali was aware of the inaccuracies in the letter and still allowed it to be presented to the White House. While Molina told Horacio Vignali that her letter "probably would do no good," [135] it was provided to Bruce Lindsey the day after it was written. Hugh Rodham faxed the Molina letter to Dawn Woollen, Bruce Lindsey's assistant, on December 21, 2000, with a notation stating, "Dawn, enclosed please find a copy of the letter we discussed." [136]

Molina has not explicitly renounced her representations in the Vignali case. She has, however, said that she will not write any more letters like her Vignali letter because prosecutors and judges know the facts better than political figures like herself.[137]

v. Los Angeles City Councilmember Mike Hernandez

Horacio Vignali cultivated a close relationship with Los Angeles City Councilmember Mike Hernandez, beginning with Hernandez's 1993 campaign, to which Vignali contributed $2,500. Vignali also hosted a day-long retreat at his estate for Hernandez and his staff. On December 4, 2000, Hernandez wrote to the President, asking him to "strongly consider commuting the sentence of Carlos A. Vignali[,] Jr." [138] Hernandez argued, "Although convicted, you will hopefully note, that no evidence was presented that Mr. Vignali had any involvement with illegal narcotics prior to the last three months leading up to his arrest." [139] Hernandez also noted Vignali's accomplishments in prison, including receiving his GED and being named the prison's "Student of the Year." [140]

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[132] NARA Document Production (Letter from Gloria Molina, Supervisor, 1st District, Board of Supervisors, County of Los Angeles, to President William J. Clinton (Dec. 20, 2001)) (Exhibit 18) (cover sheet reflecting transmission from Rodham to Lindsey, attached).

[133] *Id.*

[134] Richard Serrano and Stephen Braun, *Clinton Brother-in-Law Was Paid $400,000 to Help Win Clemencies*, L.A. TIMES, Feb. 22, 2001, at A1.

[135] Ted Rohrlich, *et. al*, *Molina, Hertzberg Wrote Letters for Convict's Pardon*, L.A. TIMES, Feb. 16, 2001, at B1.

[136] NARA Document Production (Fax Cover Sheet, Dec. 21, 2000) (Exhibit 18) (all capitalization omitted).

[137] Rene Sanchez, *Powerful Supporters Retreat on Pardon*, WASH. POST, Feb. 24, 2001, at A6.

[138] NARA Document Production (Letter from Michael Hernandez, Councilman, First Council District, City of Los Angeles, to President William J. Clinton (Dec. 4, 2000)) (Exhibit 17).

[139] *Id.*

[140] *Id.*

Hernandez's arguments were completely irrelevant as to Vignali's suitability for a commutation. Even assuming Hernandez was correct that Vignali was a large-scale drug dealer for only three months, that hardly seems to be a powerful argument in favor of executive clemency. Moreover, Carlos Vignali was suspected by law enforcement authorities of trafficking narcotics well before he was actually arrested.[141]

The extent to which the White House relied on Hernandez's letter is unclear. It is certain, though, that Hernandez was a questionable source for any kind of character reference, especially one involving drug charges. In August 21, 1997, Hernandez was arrested and charged with one felony count of cocaine possession.[142] He subsequently posted $10,000 bond and checked himself into a drug-treatment hospital.[143] Hernandez ultimately pleaded guilty and entered a drug diversionary program, which allowed him to complete his rehabilitation and, upon successful completion, avoid the felony conviction.[144]

vi. Cardinal Roger Mahony

Cardinal Roger Mahony, the Archbishop of Los Angeles, also wrote in support of Vignali. Given that the Cardinal was not a political figure, his letter may have carried particular weight with the White House. However, Cardinal Mahony's December 11, 2000, letter, like those of the political figures who supported the Vignali clemency, was misleading. Mahony stated that "prior to [Vignali's] conviction, he had no criminal record or arrests."[145] As described above, this claim was false. Cardinal Mahony also stated that there were "mitigating factors" in the Vignali case, such as the fact that "neither drugs nor drug money was found in Carlos Vignali Jr.'s possession."[146] Cardinal Mahony's recitation of these irrelevant facts gives the impression that there was no evidence linking Vignali to narcotics trafficking. To the contrary, Vignali's fellow drug dealers testified against him, and his voice was captured on intercepted telephone conversations, discussing the shipment of cocaine to Minnesota.

The Cardinal has issued a statement accepting some responsibility for his actions in the Vignali case. In particular, he claimed, "The purpose of the letter was to seek a further review of the facts, the law and the processes used in his case. I made it clear that I was incapable of making a judgment about his guilt or innocence."[147] However, the Cardinal's letter did no such thing and even concluded that "the granting of clemency to Carlos Vignali, Jr. is worthy of your consideration. His relatives, a very respected, ac-

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[141] *See infra*, section 4.a, *California Law Enforcement and Political Officials Supported Vignali's Clemency Petition Despite Serious Allegations Against Horacio and Carlos Vignali—There Were Extensive Allegations of Drug Trafficking Against Horacio Vignali and Carlos Vignali*.

[142] Beth Shuster, *Back from the Bottom*, L.A. TIMES MAG., Feb. 6, 2000, at 10.

[143] Michael Fleeman, *He Just Said Yes—An Interview with L.A. City Councilman Mike Hernandez*, L.A. TIMES MAG., Jan. 1998.

[144] *Id.*

[145] NARA Document Production (Letter from Cardinal Roger Mahony, Archbishop of Los Angeles, to President William J. Clinton (Dec. 11, 2000)) (Exhibit 19).

[146] *Id.*

[147] Mateo Gold and Larry B. Stammer, *2 City Leaders Say They Regret Helping Dealer; Clemency: Cardinal Mahony and Politician Villaraigosa Say They Shouldn't Have Written on Behalf of a Cocaine Convict They Had Never Even Met*, L.A. TIMES, Feb. 13, 2001, at A22.

tive and well-known Latino family, are committed to assist Carlos, Jr. to again become a contributing member of society." After the public learned of Cardinal Mahony's role in the Vignali case, the Cardinal conceded, "Regardless of the merits of the case, I made a serious mistake in writing to the president and I broke my decades-long practice of never sending a letter on behalf of any person whom I did not know personally. I apologize for not following my own principles in this matter." [148]

b. Support from Los Angeles County Sheriff Lee Baca

The White House has cited the support of Los Angeles County Sheriff Lee Baca, along with the support of U.S. Attorney Alejandro Mayorkas, as being instrumental to the President's decision to grant clemency to Carlos Vignali. However, Baca has publicly claimed that he did not support the grant of clemency for Vignali but, rather, believed that he should serve out his sentence.[149] Yet, when Baca's actions in the Vignali case are carefully examined, it is clear that he was close to Horacio Vignali and took a number of actions that could be seen by the White House as supporting a grant of clemency for Carlos Vignali. In light of these facts, it is troubling that Baca has refused to acknowledge the effect of his actions in the Vignali matter.

i. Sheriff Baca's Relationship with the Vignalis

Sheriff Baca met Horacio Vignali in 1991 through "Latinos for Riordan," a group which supported the election of Richard Riordan as Mayor of Los Angeles.[150] Beginning in 1993, Baca and Horacio Vignali began having one-on-one contacts, including lunches and other social meetings.[151] Over the course of the years that followed, Baca became friends with Horacio Vignali and his wife, Luz, and even visited the Vignali home on five or six occasions.[152] Vignali became a major supporter of Baca. Vignali contributed $11,000 to Baca's campaigns for Sheriff between 1994 and 2001.[153] Vignali also hosted three fundraisers for Baca at the C&H Body Shop, each of which raised, according to Baca, between $60,000 and $70,000 for his campaign.[154]

Baca first learned of Carlos Vignali's trouble with the law through his own deputies. In 1994, detectives from his narcotics bureau went to the C&H Body Shop to arrest Carlos Vignali.[155] Vignali had already been indicted in Minnesota, and detectives had just been able to identify the person previously known as "C-Low" on surveillance tapes as Carlos Vignali. When the detectives went

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[148] *Id.*

[149] Beth Shuster, *Baca Admits Call, Not Advocacy on Felon's Clemency,* L.A. TIMES, Feb. 23, 2001, at A1; Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).

[150] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.* As described below, the C&H Body Shop was the location of a heroin trafficking arrest and was alleged to be a location where cars were altered to facilitate the transportation of narcotics and drug proceeds.

[155] *Id.*

to the C&H Body Shop, Horacio told them that Carlos Vignali was not there.[156] After the detectives left, Horacio called Baca to ask why the detectives had been there and why they were looking for his son.[157] Baca, who at the time was Chief of Field Operations for Region II of the Los Angeles County Sheriff's Office,[158] told Horacio that he would look into the matter.[159] Baca called the detective who had been by the body shop and asked him why he was looking for Carlos Vignali.[160] The detective explained the matter to Baca, and Baca called Horacio back and explained that he should have his son meet with detectives at the body shop. Baca made a point of not informing Horacio Vignali why investigators were looking for Carlos and simply told Horacio that he should have his son show up at the body shop to speak to investigators.[161] Shortly thereafter, Carlos did show up at the body shop, and he was arrested.

After Carlos Vignali's arrest, Baca's information about the Vignali case came from Horacio Vignali. Baca learned of Carlos' conviction, and Horacio often mentioned his son's plight to Baca when they spoke.[162] Horacio Vignali told Baca that he believed his son was innocent and that he was spending significant sums in legal fees to appeal the conviction. Baca claims that he consistently believed that Carlos Vignali was guilty of the charges against him. He even claims to have had a heated discussion with Horacio Vignali where he told him that he believed that Carlos was guilty and responsible for his own predicament.[163]

Despite Sheriff Baca's apparent lack of sympathy for Carlos' situation, Horacio Vignali continued to mention Carlos to Baca. In 1996, Horacio informed Baca that, because he was afraid of flying, he was having difficulty visiting his son in prison in Colorado.[164] He asked for Baca's help in having Carlos moved to a prison closer to the Vignali's home in Los Angeles. On November 1, 1996, Baca wrote a letter to Vignali's probation officer. In that letter, Baca argued that more frequent contact between the Vignali family and Carlos would help the family and Carlos deal with his imprisonment. Baca also referred to Horacio Vignali's "cooperation" with the Sheriff's Department:

> Mr. Vignali, a highly respected businessman, cooperated with the initial investigation that enabled Sheriff's Department investigators to arrest his son for the offenses he was convicted of. This level of cooperation is rare and it reflects very highly on Mr. Vignali's integrity. That is why I am writing this letter.[165]

However, Baca's glowing reference to Horacio's role in Carlos' arrest is misleading. First, Baca seems to ignore the fact that Horacio's first response after being contacted by Sheriff's Depart-

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[156] *Id.*
[157] *Id.*
[158] Baca was elected Sheriff in November 1998, shortly after the death of his predecessor, Sherman Block. *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] Justice Department Document Production Mayorkas 00014 (Letter from Leroy Baca, Sheriff, County of Los Angeles, to Joan L. White, U.S. Probation Officer (Nov. 1, 1996)) (Exhibit 20).

ment investigators who wanted to speak to his son was to call his friend who was a chief in the Sheriff's Department. If Horacio Vignali was truly trying to cooperate with law enforcement, he would have told his son to meet with investigators rather than contact his politically powerful friend at the Sheriff's Department. More importantly, Baca intentionally did not tell Horacio Vignali that the Sheriff's Department intended to arrest Carlos. Rather, he told him only that they wanted to speak to him. In this instance, it appears that Sheriff Baca behaved professionally and appropriately. However, to the extent that Baca's letter portrays a father who knowingly participated in arrangements to have his son arrested, it is misleading.

ii. Sheriff Baca's Involvement in the Vignali Clemency Effort

In late 2000, Horacio Vignali again approached Sheriff Baca, this time asking for his help in obtaining a grant of clemency for Carlos. Horacio asked Baca to write a letter to the President in support of the grant of clemency.[166] Baca recalls that Horacio showed him other letters of support he had obtained, including one from Representative Becerra.[167] Horacio also mentioned that Hugh Rodham was helping him obtain a grant of clemency.[168] However, Baca declined to write any letter in support of Carlos Vignali's request for a commutation.[169] Baca informed Committee staff that he told Horacio that his son was guilty and would not receive the commutation that he wanted.[170] Baca believes that Horacio was upset by his refusal to write a letter regarding the commutation request.[171] After Baca had spoken with Horacio Vignali, he began to reconsider his refusal to write a letter and decided that he could write a general letter in support of Horacio Vignali.[172] He drafted such a letter, signed it, and gave the original to Horacio Vignali.[173] The letter drafted by Baca did make a number of strong statements in support of Horacio Vignali, but it did not mention Carlos at all:

> This letter will confirm my support for Mr. Carlos Vignali, Sr., as a man of the highest integrity and trustworthiness. I have known Mr. Vignali for many years and have witnessed his consistent support of law enforcement and especially the policing effort of the Los Angeles County Sheriff's Department. . . . I am confident that Mr. Vignali will fulfill any commitment he makes regarding any matter entrusted to him.[174]

After Horacio read the letter, he told Baca he did not believe he could use the letter because it did not help his son.[175] Indeed, Baca

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[166] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] NARA Document Production (Letter from Leroy Baca, Sheriff, County of Los Angeles, to President William J. Clinton (Dec. 8, 2000)) (Exhibit 21).
[175] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).

believes his letter was never forwarded to the White House by Vignali.[176]

After giving his letter to Horacio Vignali, Sheriff Baca did not have any further involvement with the Vignali matter until he received a phone call from Hugh Rodham in early January 2001.[177] Baca received a message from Rodham and called the number Rodham left, which turned out to be the number for the White House switchboard.[178] Baca was then connected with Rodham.[179] Rodham told Baca that he was working for Horacio Vignali and that Baca would be receiving a telephone call from the White House Counsel's Office regarding "Vignali, Sr."[180] Baca claims he told Rodham he had nothing to say about Carlos Vignali and believed Carlos deserved whatever he got.[181] But, Baca indicated he would discuss Horacio Vignali with the Counsel's Office.[182]

Several days after Rodham's telephone call, Baca received a message from someone else at the White House.[183] Baca returned the call to the man who had left the message, but, when he asked for that person, he was transferred to a woman who identified herself as an assistant of the man whom Baca sought.[184] It appears this woman was Dawn Woollen, assistant to Deputy White House Counsel Bruce Lindsey.[185] Woollen asked Baca what he could tell her about Horacio Vignali.[186] Baca told Woollen "nice things" about Horacio Vignali, particularly, that he was deeply devoted to his family and very disturbed by his son's imprisonment.[187] Woollen then asked Baca whether President Clinton should commute Carlos Vignali's prison sentence.[188] According to Baca, he answered that he was not familiar with the facts of the case and that it was the President's decision to make.[189] Woollen's recollection of the call is significantly different. She remembers that Baca "expressed support for the Vignali commutation" but that he was uncomfortable writing a letter in support of Vignali.[190] According to Baca, he had no further involvement in the Vignali case after his conversation with Woollen.[191]

iii. Conclusion

Sheriff Baca has maintained that he never supported a grant of clemency for Carlos Vignali. Rather, Baca claims that he was opposed to the commutation. After the pardon was granted, he even made a public statement that "I maintain and espouse a policy that those persons convicted of a crime should serve their full and com-

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[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] Interview with Dawn Woollen, Administrative Assistant to Deputy White House Counsel Bruce Lindsey, the White House (Sept. 25, 2001).
[186] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).
[187] *Id.*
[188] *Id.*
[189] *Id.*
[190] Interview with Dawn Woollen, Administrative Assistant to Deputy White House Counsel Bruce Lindsey, the White House (Sept. 25, 2001).
[191] *Id.*

plete sentence."[192] Moreover, Sheriff Baca has taken the position that it was not reasonable for the White House to interpret his call as conveying support for the commutation of Carlos Vignali's sentence.[193] However, if the account of Dawn Woollen, the assistant to Deputy White House Counsel Bruce Lindsey, is accurate, Sheriff Baca's position is disingenuous. In addition, Sheriff Baca took a number of discrete actions that assisted the effort to get Carlos Vignali out of prison. As such, the White House was justified in believing that Baca supported a grant of clemency for Vignali.

Baca knew or should have known that his actions would assist the effort to get Carlos Vignali out of prison. When Baca wrote a letter to President Clinton vouching for Horacio Vignali's character, he knew that he was providing Vignali with a letter that would be used to get Carlos Vignali out of prison. When he agreed to speak with White House staff about Horacio Vignali, he knew the only reason the White House wanted to know about Horacio Vignali was that they were considering a grant of clemency for Carlos Vignali. It is difficult to conceive what Sheriff Baca thought he was doing if not assisting in the effort to get Carlos Vignali out of prison. Indeed, the White House interpreted Baca's call as supporting a grant of clemency to Carlos Vignali. It appears that Sheriff Baca's support for Vignali, together with that of U.S. Attorney Alejandro Mayorkas (as described below), was instrumental to the White House decision to grant clemency. At a Committee hearing, Deputy White House Counsel Bruce Lindsey stated that "the Los Angeles sheriff indicated he supported a commutation." Lindsey also stated that:

> I originally was probably negative. After the call from the . . . sheriff of Los Angeles and our office reached out to the U.S. attorney in Central District of California and Los Angeles, I decided that given the community support and their position that into the county in which he would go to live, that they would be aware of the crime situation, if you will, in their community, and if they were not concerned about him coming back to their community, that I thought it was an appropriate commutation.[194]

Sheriff Baca has been careful to point out that in none of his calls or letters did he expressly advocate support for a grant of clemency for Carlos Vignali. Nonetheless, it is likely that the careful language in the Sheriff's letters resulted from his own desire to avoid creating evidence that he supported the commutation rather than from any lack of desire to help the Vignali family. Indeed, an internal White House note confirms this view. The note indicates that Hugh Rodham told Dawn Woollen that "Sheriff Baca from LA is more than happy to speak with you about [Vignali] but is uncomfortable writing a letter offering his full support."[195] This note sup-

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[192] Beth Shuster, *Baca Admits Call, Not Advocacy on Felon's Clemency*, L.A. TIMES, Feb. 23, 2001 at A1.

[193] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).

[194] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 387, 426 (Mar. 1, 2001).

[195] NARA Document Production (Note from Dawn Woollen, Secretary to Deputy White House Counsel Bruce Lindsey, the White House, to Bruce Lindsey, Deputy White House Counsel, the White House) (Exhibit 22) (NARA cover sheet, reflecting that document came from Lindsey's file, attached).

ports the conclusion that Sheriff Baca's actions had the effect of assisting Horacio Vignali's effort to get his son out of prison but did not want to create a paper trail showing that he helped a convicted cocaine dealer get out of prison.

The most troubling aspect of Sheriff Baca's involvement is his continued claims that he was opposed to the Vignali commutation. In his public statements since the commutation and his interview with Committee staff, Baca maintained that Vignali was guilty and should not have had his sentence commuted. Moreover, Sheriff Baca believes there was nothing inappropriate about his role in the Vignali matter. However, when Sheriff Baca was asked squarely by the White House Counsel's Office whether the President should commute Vignali's sentence, he said he was not familiar with the facts of the case and it was a decision that only the President could make. If Baca believed Vignali was guilty, as he claims to have, and was opposed to a commutation, he should have shared his views with the White House. It is troubling that Sheriff Baca would make self-serving statements to the Committee and the press that he was opposed to the commutation yet refused to express meaningful opposition when given the opportunity.

Sheriff Baca's actions, which are troubling enough when viewed in isolation, are even more troubling when considered in light of two additional facts. First, Horacio Vignali was a major financial supporter of Baca's campaign, contributing $11,000 and raising tens of thousands of dollars more. Second, as discussed below, law enforcement knew of numerous allegations that Horacio Vignali himself was involved in trafficking cocaine. Thus, the top law enforcement officer in Los Angeles County supported a grant of clemency for a cocaine trafficker, the son of a major financial supporter and alleged narcotics trafficker. Sheriff Baca's involvement in the Vignali matter was inexcusable, especially for a law enforcement officer.

c. Support from U.S. Attorney Alejandro Mayorkas

As described below, the government attorneys who actually convicted Vignali vehemently opposed the Vignali commutation. In the face of this opposition, the intervention of Los Angeles-area U.S. Attorney Alejandro Mayorkas is particularly troubling. According to President Clinton's Deputy Counsel, Bruce Lindsey, the White House Counsel's Office "reached out" to Mayorkas regarding Vignali's clemency petition.[196] Why the White House reached out to Mayorkas—who had no role in prosecuting Vignali in Minneapolis—rather than to the federal prosecutors who convicted Vignali is far from clear. Equally unclear and of greater concern is why the White House gave greater weight to Mayorkas' position than it did to the strenuous objections of the U.S. Attorney's Office that actually convicted Vignali and the Pardon Attorney's negative recommendation.

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[196] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 426 (Mar. 1, 2001).

i. Mayorkas' Initial Exposure to the Vignali Matter

Sometime in the first quarter of 1999, Mayorkas received a call from Representative Xavier Becerra.[197] During that conversation, Becerra informed Mayorkas that he had received information regarding an appeal of Carlos Vignali's conviction.[198] Becerra sent Mayorkas a copy of the brief and asked him to look into the matter.[199] Becerra attached to the brief a few letters submitted by various community leaders in support of Carlos Vignali's case.[200] Because some of those letters were addressed to a "Pardon Secretary," Mayorkas believes he assumed Carlos Vignali was seeking clemency.[201]

According to Mayorkas, he treated Congressman Becerra's call as he did other inquiries from congressmen, which he received frequently.[202] In this case, he consulted Minnesota U.S. Attorney Todd Jones, whose office tried the original case against Vignali.[203] In fact, Mayorkas called Jones twice.[204] In the first call, which occurred shortly after the inquiry from Representative Becerra, Mayorkas called Jones to obtain information on the status of Carlos Vignali's case.[205] In response, Jones told Mayorkas that Carlos Vignali was "a major player" in drug trafficking.[206] Jones told Mayorkas, "don't go there," when it came to Vignali—he was "bad news."[207] Jones also told Mayorkas he should call Assistant U.S. Attorney Andrew Dunne for further details regarding the case.[208]

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[197] Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001).

[198] *Id.*

[199] *Id*. Mayorkas did not read the brief. After he received it, he put it in a file.

[200] *Id.*

[201] *Id.*

[202] *Id.*

[203] *Id*. Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001); *Power of Words from High Places*, L.A. TIMES, Feb. 14, 2001, at B10; Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1. Jones believed that Mayorkas received inquiries from Horacio Vignali and was reaching out to Jones to look into Vignali's case. Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001). Specifically, Jones opined, "Why [was Mayorkas calling him]? Because the old man was calling him. Horacio was contacting [Mayorkas] and his U.S. Attorney's Office seeking support for a commutation." Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1.

[204] *Id*. Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001); *Power of Words from High Places*, L.A. TIMES, Feb. 14, 2001, at B10; Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001 at A1.

[205] Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001); Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001) (Jones noting that December 2, 1999, is the likely date); Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001 at A1.

[206] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2000).

[207] *Id.* In an Interview with Committee staff, Mayorkas denies having been told this. Also, Jones recalls that, during their discussion, Mayorkas referred to Horacio Vignali as a "player in the community in Los Angeles, a pillar in the community." Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1. *See also* Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001) (describing that Mayorkas also told Jones that Horacio Vignali was "a big guy in the community"). Mayorkas sternly denies ever having told Jones that Horacio Vignali was a pillar—or player—in the community. Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001). According to Mayorkas, he just does not talk like that.

[208] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001). Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001) (Mayorkas stat-

Mayorkas noted that he might have asked Jones during the call if his office was interested in receiving Carlos Vignali's cooperation, but he does not specifically recall.[209] Mayorkas relayed what he learned back to Congressman Becerra.[210]

Jones also referred Mayorkas to a line attorney who handled the case for specifics regarding Carlos Vignali's conviction.[211] As described below, that line attorney was probably Assistant U.S. Attorney Andrew Dunne, who tried the government's case with former Assistant U.S. Attorney Denise Reilly. Jones believes that Mayorkas may have followed up with Dunne. Mayorkas cannot recall whether he spoke with Dunne but believed that such a conversation may have taken place. Unfortunately, the Committee was unable to interview Dunne to confirm the conversation because of objections from the Department of Justice. However, if such a conversation took place, Mayorkas would have likely gained even more specific information regarding the scope of Vignali's criminal activity.

After looking into the Vignali case for Representative Becerra, Mayorkas actually met Horacio Vignali for the first time. Over the next two years, Mayorkas would see Horacio Vignali at various community events and at several one-on-one meetings with Vignali. When Mayorkas saw Horacio Vignali, Vignali would usually mention his son's case and tell Mayorkas how much anguish he was suffering as a result of his son's imprisonment. Sometime early in 1999, Horacio Vignali spoke to Mayorkas about executive clemency.[212] Mayorkas told Horacio the only way he knew that Carlos' sentence could be reduced was for him to cooperate with law enforcement and receive a reduction of his sentence under Federal Rule of Criminal Procedure 35.[213] Mayorkas does not recall Horacio Vignali's response to that comment.[214]

ii. Mayorkas Calls the White House

In early January of 2001, Horacio Vignali called Mayorkas and, noting that a petition for the commutation of his son's sentence was pending, asked Mayorkas if he would call the White House.[215] During that conversation, Horacio Vignali stated that other individuals, including Sheriff Baca and Archbishop Mahoney, had made similar communications.[216] After Horacio Vignali's call, Mayorkas called the Justice Department to see if it was proper for him to contact the White House regarding a clemency matter in which he did not have a prosecutorial role.[217] The Justice Department referred Mayorkas to the Office of the Pardon Attorney.[218]

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ing that he recalls having been referred to a line attorney as well as the general fact of their conversation but cannot specifically recall what was discussed).

[209] *Id.*

[210] *Id.*

[211] *Id.* Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001) (Jones noting that he referred Mayorkas to Dunne "for the gory details").

[212] Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001).

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] *Id.*

[217] *Id.*

[218] *Id.*

Mayorkas spoke to an unidentified female lawyer at the Pardon Attorney's Office and asked if it was permissible for him to make a call to the White House regarding clemency.[219] Mayorkas recalls telling the attorney that: (1) the case he intended to weigh in on was not in his jurisdiction; (2) he did not know the defendant but knew the parents; and (3) he intended only to speak to the integrity of the parents.[220] According to Mayorkas, the Office of the Pardon Attorney permitted him to call the White House.[221] Mayorkas noted that the attorney with whom he spoke did not express the slightest reservation about his intention to call the White House.[222]

Before calling the White House, Mayorkas called Minnesota U.S. Attorney Todd Jones and informed him of his intention to weigh in with the White House.[223] Indeed, Jones also recalls that Mayorkas initiated a second contact with him regarding the Carlos Vignali matter and specifically asked him how he came out on Vignali's clemency request.[224] Jones told Mayorkas that he opposed commutation of Vignali's sentence.[225] He did not recall whether Mayorkas indicated an intent to weigh in with the White House but noted that the conversation was very brief.[226] Jones was troubled by Mayorkas' inquiries about the Vignali case and his subsequent lobbying on behalf of Vignali, believing that only the U.S. Attorney who prosecuted the case should have been involved in recommending a grant of clemency and that, if a prosecutor was not so involved, he should "stay the hell away from it."[227] Jones remarked that if the roles were reversed, he would never have weighed in on the Vignali case.[228]

Mayorkas then called Deputy White House Counsel Bruce Lindsey.[229] Mayorkas believes that Horacio Vignali suggested he call Lindsey and provided him Lindsey's contact information.[230] Mayorkas' call was returned by Associate White House Counsels Meredith Cabe and Eric Angel.[231] Mayorkas indicated that Horacio Vignali had asked him to make the call.[232] Also, according to Mayorkas, he told Cabe and Angel that he was not familiar with the facts of the case and did not know the defendant but knew the parents to be good people.[233] In that conversation, he also noted

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[219] *Id.*
[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001). *See also* Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1.
[225] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001); Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001).
[226] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001); Richard A. Serrano and Stephen Braun, *U.S. Attorney Pursued Clemency Case*, L.A. TIMES, Feb. 13, 2001, at A1.
[227] Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2001).
[228] *Id.*
[229] *Id.*
[230] *Id.*
[231] *Id. See also* Telephone Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001) (corroborating that she and Angel spoke with Mayorkas); Interview with Eric Angel, Associate Counsel to the President, the White House (Mar. 28, 2001) (corroborating that he and Cabe spoke with Mayorkas).
[232] Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001).
[233] *Id.*

that the federal prosecutors in Minnesota who convicted Vignali opposed commutation of Vignali's sentence.[234] Mayorkas does not recall having expressed support for Vignali's clemency request during that call.[235] But, he observed that the fact of his call conveyed support for the commutation, noting, "By virtue of the fact of the phone call, there's no question that I conveyed support for the commutation."[236]

Mayorkas' belief, in hindsight, that his call to the White House conveyed support for Vignali's clemency request was correct. Statements of various staff members at the White House involved in the clemency process indicated that they thought that Mayorkas supported the commutation. Chief of Staff John Podesta plainly believed that Mayorkas actually supported commutation of Vignali's sentence.[237] Also, in testimony before the Committee, Deputy White House Counsel Bruce Lindsey stated that Mayorkas, "while saying he didn't know much about the facts, felt like that the family was a good environment for which [sic] Mr. Vignali would get the proper supervision."[238] Associate White House Counsel Meredith Cabe likewise confirmed that Mayorkas supported Vignali's petition, said he thought well of the Vignali family, and believed that the family would support Vignali after his release.[239] According to Cabe, Mayorkas explained his views in the Vignali case by asserting that most drug sentences were disproportionate.[240]

iii. Conclusion

Alejandro Mayorkas acted inappropriately in supporting the commutation of Carlos Vignali's sentence. Mayorkas made three major mistakes in the Vignali matter. First, Mayorkas should have realized that by calling the White House regarding Horacio Vignali, he was conveying support for the commutation of Carlos Vignali's sentence. Mayorkas now understands that his call had such an effect, but there is no reason that Mayorkas should not have understood this simple fact when he called. Mayorkas understood that the White House was considering the commutation of Vignali's sentence. He knew that the only reason the White House wanted to hear from him was so that it could evaluate whether to grant the commutation. Therefore, when he provided a positive character reference for Horacio Vignali, he should have known it would have a positive effect on Carlos Vignali's commutation petition.

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[234] *Id.*
[235] *Id.*
[236] *Id.*
[237] Richard Serrano, *L.A. Leaders' Support Cited in Decision to Free Vignali*, L.A. TIMES, Feb. 19, 2001, at A1.
[238] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 387 (Mar. 1, 2001).
[239] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001); Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).
[240] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001); Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001). Mayorkas strenuously denies having said this. Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001). According to Mayorkas, he was never in a position to opine about the appropriateness of Vignali's sentence. And, if he was asked whether he holds that position now, the answer would be "no." And, if one were to ask whether he espoused that position then, his answer would be "no." According to Mayorkas, "Some sentences are too lenient. Others are too harsh." But, regarding the term "disproportionate" as relating to Vignali's sentence, Mayorkas stated that he "never talked like that."

Second, just as Mayorkas should have known the effect of his actions, he should have known he was weighing in on a matter about which he knew very little. Mayorkas was aware that the prosecutor responsible for the Vignali case, Todd Jones, was against the commutation. In fact, he pointed this fact out to White House staff during his conversation with them. However, Mayorkas should have also known that, as a U.S. Attorney, he was providing confusing signals to the White House. He should have realized he was abusing his office by providing a character reference in a clemency case in which his office had no involvement.

Finally, Mayorkas did not know Horacio Vignali well enough to offer a character reference. Mayorkas' relationship with Horacio Vignali consisted of seeing Vignali at various community events and only two or three one-on-one meetings for dinner or drinks. Mayorkas now concedes that he did not know Vignali well enough to call the White House and provide a character reference. But, Mayorkas' concession raises questions as to why he made the call at all. Three possibilities are apparent: first, that Mayorkas is simply an overly compassionate person who provided help when he should not have; second, that he wanted to help a well-connected, wealthy, and politically powerful businessman; and third, that he felt pressure to help Vignali because so many other Los Angeles political figures were helping him. Most likely, Mayorkas assisted Vignali out of a combination of all three of these factors.

However, of all of the people who were involved in helping Carlos Vignali, Mayorkas appears to have most clearly accepted responsibility and apologized for his actions. After his involvement in the Vignali matter came to light, Mayorkas explained to his staff:

> I called the White House counsel's office and informed the office that I was not familiar with the facts of the case, that the prosecuting U.S. attorney was against the commutation, and that I was calling because I knew the parents to be upstanding people. I understand that my telephone call conveyed support for the commutation. In hindsight, it was a mistake for me to place that call [to the White House] and I am sorry that I did so. I allowed my compassion for the parents to interfere with my judgment."[241]

In addition, the responsibility for the Vignali commutation cannot be pinned entirely on Mayorkas, as some White House staff have attempted to do. In various settings, White House staff have pointed to the involvement of Mayorkas, along with Sheriff Baca, as being central to the President's decisionmaking. Deputy White House Counsel Bruce Lindsey testified that he changed his mind regarding the Vignali matter after the White House heard from Baca and Mayorkas. Associate White House Counsel Meredith Cabe stated that Mayorkas' opinion was "significant" because "very few prosecutors advocate clemency in any form." But, the White House was not justified in relying on the support offered by Baca or Mayorkas to any determinative extent. While they both made statements that amounted to support for Horacio Vignali, and as

[241] *U.S. Attorney Apologizes for Role in Vignali Pardon*, CITY NEWS SERVICE, Feb. 23, 2001.

such, support for the commutation, they both also made it clear that they knew little about the case against Carlos Vignali. It appears that the White House was looking for reasons justifying commutation and as such used the support of Mayorkas and Baca as a fig leaf to rationalize its decision.

4. California Law Enforcement and Political Officials Supported Vignali's Clemency Petition Despite Serious Allegations Against Horacio and Carlos Vignali

a. There Were Extensive Allegations of Drug Trafficking Against Both Horacio and Carlos Vignali

The Committee has learned of numerous allegations made to law enforcement as long as twenty-five years ago that Horacio Vignali was involved in cocaine trafficking and other illegal activity. The Committee has also discovered other allegations that Carlos Vignali was involved in drug sales even more extensive than those for which he was prosecuted in Minnesota. Although the information the Committee obtained consists solely of allegations against Horacio and Carlos Vignali, it is extremely significant. These reports allege long-term criminal activity on the part of Horacio Vignali, in particular, that Horacio Vignali was involved in the cocaine trade and was the source of supply for his son. Despite the availability of these reports to Sheriff Baca and U.S. Attorney Mayorkas, both chose not to exercise any due diligence before supporting Vignali's clemency plea. Although the White House and the Justice Department also had access to these reports, it apparently did not consider them. Even though these serious allegations have not been proven, the mere fact of their existence—without additional information—should have ruled out the possibility of executive clemency for Carlos Vignali. Instead, these reports were never considered.

While the extensive DEA reports regarding Horacio and Carlos Vignali are being made public only now, it appears that suspicions about Horacio Vignali's role in drug trafficking were widespread and well-known to law enforcement. In interviews with Committee staff, Todd Jones and Denise Reilly, who were responsible for the investigation and prosecution of Carlos Vignali in Minnesota, both indicated they believed that Carlos Vignali was not the "end of the line" and were aware of the widespread belief among investigators that Horacio Vignali was involved in drug trafficking with his son.[242] Law enforcement officers in California had even more detailed knowledge regarding allegations against Horacio and Carlos Vignali. According to a number of investigators working for local law enforcement in Southern California, both Horacio and Carlos Vignali had been the subjects of major drug investigations.[243] As

[242] Telephone Interview with the Honorable Denise Reilly, Juvenile Court Judge, 4th Judicial District of Minnesota (Hennepin County) (May 11, 2001); Telephone Interview with Todd Jones, U.S. Attorney for the District of Minnesota, Department of Justice (May 2, 2000).

[243] In the course of its inquiry, the Committee has learned that while the White House was reviewing Carlos Vignali's clemency petition, Horacio Vignali and associates of Vignali were part of an Organized Crime Drug Enforcement Task Force ("OCDETF") investigation in the Los An-

Continued

the following reports indicate, a number of law enforcement agencies apparently received credible information indicating that Carlos and Horacio Vignali were personally involved in large-scale drug dealing. These same agencies also received allegations indicating that the Vignalis were part of a large organized drug-dealing ring headed by George Torres.

The first series of reports indicates that there were allegations of drug dealing against Horacio Vignali dating back to 1976. Among those reports is a DEA–6, an internal investigative report, which notes:

> [Horacio] Carlos VIGNALI[244]—Co-owner of the C & H Auto Body Shop. His drug relationship with the [redacted] Organization is also unknown. VIGNALI however is a close personal friend of [redacted]. In November, 1975, he negotiated with ATF Agents to sell a machine gun and stated to them that he had also smuggled heroin into the United States utilizing automobiles. Since current intelligence indicates that the remainder of the [redacted] Family in Los Angeles, [redacted] are still dealing in multi-kilogram quantities of heroin, it is recommended that a grand jury probe be initiated with the object of eliminating the remaining [redacted] Organization in Los Angeles by obtaining indictments on [redacted] possibly other members of their organization such as [redacted] [Horacio] Carlos VIGNALI, [redacted].[245]

A December 1, 1976, DEA report contains similar information:

> [Horacio] Carlos VIGNAL [sic]—the [redacted]s used his body shop in Los Angeles to take heroin out of the drive shafts of vehicles brought into the United States from Mexico.[246]

A more recent set of DEA reports contains additional allegations that Horacio Vignali was involved in drug trafficking. They also show that the DEA received information indicating Horacio was involved in the drug trade with his son Carlos. A March 19, 1993, report states:

> The "traps", (hidden compartments) were built into the truck through Carlos VIGNALI Jr. for $5,000.00. [Redacted] has also purchased cocaine from Carlos VIGNALI Jr. of Los Angeles. . . . VIGNALI's father Carlos VIGNALI aka "pops" owns a body shop, at 1260 Figueroa and is the source of supply for his son.[247] . . . An associate of

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geles area. Various federal and California law enforcement agencies were investigating Carlos and Horacio Vignali's involvement in supplying narcotics before Carlos' conviction in Minneapolis and Horacio Vignali's personal and business relationship with alleged California drug figure George Torres. In this case, the OCDETF investigation was being conducted by the federal government in cooperation with various agencies of the California State Department of Justice.

[244] The DEA report refers to "Carlos Vignali," but it clearly means Horacio Vignali, or "Carlos Vignali, Sr.," as he is known to many of his associates. The date of birth listed for Vignali, as well as other personal information, appears to correspond to that of Horacio Vignali.

[245] DEA Document Production V–DEA–00009 (DEA–6–Internal Investigative Report (Feb. 18, 1976)) (Exhibit 23).

[246] DEA Document Production V–DEA–00012 (DEA–6–Internal Investigative Report (Dec. 1, 1976)) (Exhibit 24).

[247] This information casts the following testimony from Horacio Vignali at Carlos' trial in a new light: "I treated him like my best friend, my partner. Anything he needed, I would always

> VIGNALI, Jorge TORRES aka "G" owns [NUMBERO UNO] Market on Jefferson St. in Los Angeles. Across the street from the Market, TORRES maintains a warehouse full of luxury vehicles and tractor trailers used to transport cocaine. The warehouse also has a penthouse complete with a casino where TORRES and VIGNALI gamble. . . . Cocaine purchased from VIGNALI Jr. went to [redacted] of Shreveport, La.[248]

The Committee has received additional information from a DEA report that it is not releasing because it could identify confidential informants.[249] In this report, an informant alleges, based on his direct knowledge, that Carlos Vignali sold hundreds of kilograms of cocaine. Additionally, Vignali is alleged to have stated that he had ties to the relative of a prominent South American cocaine dealer. Like the other information in the DEA reports, these allegations are unproven.

In addition to the reports listed above, two recent reports indicate that the DEA received information linking Horacio Vignali to a large-scale drug dealing organization headed by George Torres.[250] A September 25, 1997, DEA Case Initiation Report describes the Torres organization:

> [Torres' organization] has been in existence since the middle 1980's when it was closely associated with the [redacted] family in their drug trafficking. By the early 1990's this group were [sic] transporting approximately 1,800 kilograms of cocaine into the Los Angels [sic] area from Mexico. At that time they were smuggling the cocaine using the [redacted] TORRES's tractor-trailer trucks, concealing the drugs inside laundry detergent and jalapeno chilli [sic] cans. [Redacted.] Since that time TORRES has continued to be involved in drug trafficking and information shows that his organization supply [sic] various drug trafficking organizations throughout the United States. TORRES' organization has used illicit profits derived from drug trafficking to buy legitimate businesses and properties throughout Los Angels [sic] and southern California. . . . Investigators believe that the organization uses these businesses to laundry [sic] its drug proceeds.[251]

A September 16, 1998, DEA report about Torres reported the following:

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provide for him. Always. It doesn't matter. I always provided for him." *See* Transcript of Trial, *U.S. v. Vignali* (D. Minn. Dec. 1, 1994) at 297.

[248] DEA Document Production (DEA–6–Internal Investigative Report (Mar. 19, 1993)) (Exhibit 25).

[249] *See* DEA Document Production V–DEA–00028–29 (DEA–6–Internal Investigative Report (Apr. 26, 1993)) (Exhibit 26). The Committee has reviewed an unredacted copy of this report but is not releasing it for the reason described above.

[250] At trial, Carlos Vignali conceded that Torres was a friend of the family and, in particular, of his father. Transcript of Trial, *U.S. v. Vignali* (D. Minn. Nov. 29, 1994) at 227. Carlos appears to have used a variation of George Torres' name—"Charles Torres"—when he subscribed for his pager. Because Carlos used that pager to communicate with his coconspirators in trafficking cocaine, he used "Charles Torres" to conceal his true identity.

[251] DEA Document Production V–DEA–00110 (DEA Case Initiation Report (Sept. 25, 1997)) (Exhibit 27).

> To date, the investigation shows that the TORRES organization is involved in the importation and distribution of drugs throughout the United States. Latest intelligence reveals that this group is distributing approximately one hundred (100) kilograms of cocaine per month. [Redacted.] George TORRES is the head of this organization. TORRES' direct associates include [redacted] Carlos Vignali. [Redacted] Carlos Horatio [sic] VIGNALI's role in the organization is relatively unknown at this time. It is believed that VIGNALI functions as a financial partner in the organization. VIGNALI has been involved in organizing meetings between TORRES and individuals with extensive criminal backgrounds.[252]

The report goes on to describe the scope of Torres' activities:

> The TORRES organization has used its profits from drug trafficking to purchase legitimate businesses and properties throughout the Southern California area—The grocery and wholesale business are cash intensive thus making it easy to launder illicit funds through them. In 1996, TORRES' businesses had sales of approximately $50,000,000. Investigators believe that TORRES uses these businesses, properties and vehicles to launder his drug profits. Members of the TORRES organization have been involved in various acts of violence. In 1996, TORRES was arrested for being a felon in possession of a firearm. The Los Angeles Police Department (LAPD) has named TORRES a suspect in two murders. One involved a disgruntled employee and the other involved the owner of a property adjacent to one of TORRES' businesses. TORRES has been known to intimidate and threaten others and in so doing likes to portray himself as a Mafia member. He often uses his associates to carry out these acts of intimidation.[253]

This troubling report regarding Horacio Vignali and George Torres was received just one month after Carlos Vignali applied for executive clemency.

b. The Extensive Allegations Against Horacio and Carlos Vignali Were Never Considered by Sheriff Baca, U.S. Attorney Mayorkas, or the Clinton White House

The allegations made against Horacio Vignali, Carlos Vignali, and George Torres are serious. However, with respect to the decision to commute the sentence of Carlos Vignali, the key fact is that these allegations existed, and none of the individuals involved in the clemency process conducted sufficient due diligence to find these reports. Both Sheriff Lee Baca and U.S. Attorney Alejandro Mayorkas, who made supportive calls to the White House on the Vignalis' behalf, had access to this information. In addition, the White House should have been provided with this information as

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[252] DEA Document Production (Case Initiation Report on the George Torres Cocaine Trafficking Organization, Sept. 16, 1998) (Exhibit 28).

[253] *Id.*

part of the clemency process. However, it appears that Baca, Mayorkas, and the White House were all unaware of the extensive allegations against the Vignalis.

Committee staff asked Sheriff Baca whether he was aware of any allegations that Horacio Vignali was involved in drug trafficking. Baca replied that he was not aware of any such allegations.[254] Baca readily admitted that he would be the person to know if there were any such allegations against Vignali.[255] Sheriff Baca was also asked if he was familiar with George Torres. He stated that he knew Torres and "know[s] him to be a legitimate businessman."[256] As he himself conceded, Sheriff Baca, the top law enforcement officer in Los Angeles County, should have known if a businessman of Horacio Vignali's or George Torres' caliber was alleged to have been involved in drug dealing.[257] Therefore, it is troubling that Baca is completely unaware of the allegations against Vignali and Torres. It appears that rather than investigate these allegations against Horacio Vignali and close down what might have been a major conduit for drugs into the Los Angeles area, Sheriff Baca maintained a warm relationship with Vignali and vouched for him as a "man of the highest integrity and trustworthiness." Indeed, Baca held three fundraisers at Vignali's C&H Body Shop, which itself was alleged to be a locus for unloading drugs and outfitting vehicles for smuggling drugs.

Committee staff also asked Alejandro Mayorkas whether he was aware of allegations that Horacio Vignali was involved in drug trafficking.[258] Mayorkas expressed great surprise that Horacio Vignali was the subject of these kinds of allegations.[259] When informed of the allegations, Mayorkas immediately stated that if he had been aware of the allegations, he would have ruled out any possibility of involvement in Carlos Vignali's clemency petition. Mayorkas also confirmed that it would not have mattered to him that the allegations against Horacio Vignali were not proven. Mayorkas stated that "an allegation is enough—the world consists of the caught and the uncaught. Allegations alone would have eliminated the possibility [of my involvement]."[260]

Mayorkas conceded that he did not exercise any due diligence regarding the Vignalis prior to his weighing in on the clemency proceedings with the White House.[261] In other words, he did not consult his criminal chief or the head of his narcotics division at the Los Angeles-area U.S. Attorney's Office to determine whether his own office had an investigative or prosecutorial interest in the Vignalis, which might have conflicted with his assistance to the Vignalis.[262] Mayorkas explained that his failure to conduct due

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[254] Telephone Interview with Leroy Baca, Sheriff, County of Los Angeles (June 22, 2001).
[255] *Id.*
[256] *Id.*
[257] According to a November 10, 1992, DEA report, the gang enforcement unit at the Los Angeles County Sheriff's Department discovered that a vehicle used by Carlos Vignali was registered to a company that owned cars "associated with various gangs." DEA Document Production V–DEA–00024 (DEA–6, Report of Investigation, "Carlos Anibal Vignali," (Nov. 10, 1992)) (Exhibit 29).
[258] Telephone Interview with Alejandro Mayorkas, former U.S. Attorney for the Central District of California, Department of Justice (June 15, 2001).
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*

diligence resulted from his belief that he was not supporting Carlos Vignali's clemency petition. Since he did not view himself as providing support for the grant of clemency, Mayorkas did not believe that he needed to investigate Vignali's background. However given what he knows in hindsight about the Vignalis and about how his call to the White House was interpreted by White House staff, Mayorkas conceded it was perhaps an error for him to have taken his involvement in the clemency proceedings so lightly.[263]

While Mayorkas' acceptance of responsibility is commendable, his actions in this matter remain less than commendable, especially for the top federal prosecutor in Los Angeles. Mayorkas has explained that his actions in this matter were motivated by his sympathy and compassion for a father who appeared to be distraught by the imprisonment of his son. Because he failed to conduct due diligence and look into Horacio Vignali's background before contacting the White House, Mayorkas ended up providing assistance to a man who was alleged to be a drug dealer and the source of cocaine for his son. Like Sheriff Baca, Mayorkas was a senior law enforcement official charged with protecting his communities. By becoming involved in the Vignali matter without being fully aware of the facts, both did the public a profound disservice to the rule of law.

There is no indication that the White House was ever made aware of the additional allegations against Horacio and Carlos Vignali. Unlike many other last-minute pardons and commutations, the Vignali commutation was filed with and processed by the Justice Department. Although the Vignali petition was filed with the Justice Department in August 1998,[264] there is no indication that the Justice Department discovered these allegations against Horacio and Carlos Vignali during its background check. The memorandum prepared by the Pardon Attorney, Roger Adams, for President Clinton makes no mention of these allegations. There is also no indication that they were provided to the White House in any other form. However, it is possible that the White House would have learned about these allegations if it had reached out to the prosecutor who had tried Vignali's case or the judge who sentenced him. Rather, they reached out to Horacio Vignali's friends and associates in Los Angeles who knew little about the Vignali case but were ready to provide a favorable reference.

Therefore, the failure of the White House to receive this information appears to be the result of the skewed, *ad hoc* system set up by President Clinton to churn out pardons and commutations in the waning days of his presidency. This was a system that necessarily catered to the wealthy and the well-connected. If White House staff had approached the Vignali matter in a deliberate manner and had spoken to the individuals who knew the most about Carlos Vignali's conviction, they likely would have learned this information. While it is not certain that this information regarding the drug dealing allegations against Horacio and Carlos Vignali would have changed President Clinton's mind, it clearly should have been considered.

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[263] *Id.*

[264] NARA Document Production (Petition for Commutation of Sentence) (Exhibit 10).

C. The White House's Review of Vignali's Clemency Request

Carlos Vignali's clemency petition was first filed with the Justice Department in August 1998, but it first came under serious consideration much later, in December 2000, when Hugh Rodham was hired by the Vignali family and approached the White House about a grant of clemency for Carlos Vignali. Rodham's contacts with the White House started a process culminating in the January 20, 2001, commutation of Vignali's sentence. The process by which the White House considered the Vignali petition was remarkable and disturbing for a number of reasons:

- Hugh Rodham made a number of misrepresentations to the White House regarding the Vignali matter. Nevertheless, the White House continued to rely on his word and granted the commutation he so desperately sought.
- The White House sought input from a number of Vignali's supporters yet never contacted the prosecutors who tried the Vignali case or the judge who sentenced him.
- The White House ignored the strenuous objections lodged by the Pardon Attorney who had considered the position of the prosecutors who tried the Vignali case.
- The White House apparently relied heavily on letters and statements of support by California politicians and law enforcement figures despite the fact that they either misstated the Vignali case or were completely unaware of the facts of the case.
- The White House has subsequently misstated the facts of Vignali's case in an attempt to justify the unjustifiable.

1. Hugh Rodham's Hiring

In connection with its investigation, the Committee requested that Hugh Rodham produce records to the Committee and participate in an interview with Committee staff. Rodham refused both requests, citing attorney-client privilege. Rodham made a blanket invocation of the privilege even though the privilege does not apply to the vast majority of Rodham's activities. For example, Rodham's contacts with third parties, like White House staff, are not covered by the attorney-client privilege. Therefore, by using the attorney-client privilege to avoid any inquiry from the Committee, Rodham is simply seeking to avoid questions about his activities rather than to protect any legitimately privileged information. Despite Rodham's unreasonable invocation of privilege, the Committee was able to piece together a number of Rodham's activities.

It appears that the Vignalis hired Rodham late in 2000. According to Luis Valenzuela, a close friend of Horacio Vignali,[265] James Casso, the son-in-law and former district director of former Congressman Esteban Torres, introduced Horacio Vignali to Rodham sometime around October 2000.[266] At that time, Valenzuela at-

[265] Valenzuela is a Los Angeles-area real estate executive and a member of the Congressional Hispanic Caucus Institute.

[266] Telephone Interview with Luis Valenzuela, Vice President, NAI Capital Commercial Real Estate Services (Oct. 30, 2001). Presently, Casso, who served as Congressman Torres' district director until Torres' retirement in 1999 and unsuccessfully ran for Congress, is an attorney with the Los Angeles firm of Alavarez-Glasman & Colvin.

tended a dinner at Barrangas restaurant in Los Angeles where he met with Horacio Vignali, Casso, Rodham, and three members of the Lum family.[267] The Lums were seeking presidential pardons through Hugh Rodham at that time, and it is possible Rodham introduced the Lums to Horacio Vignali as a way of marketing his services. After dinner, the Lums left the restaurant, and Horacio Vignali discussed his son's clemency matter with Rodham.[268] At that point, Horacio Vignali explained the background of his son's underlying conviction and provided Rodham with a binder of materials regarding his son.[269] Rodham indicated that he would review the matter, "make some calls," and get back to Horacio Vignali.[270] For that initial consultation, Rodham charged Horacio Vignali $4,200.[271] Valenzuela was not privy to any further meetings or discussions between Rodham and Vignali.[272]

Due to the refusal of Horacio Vignali, Hugh Rodham, and James Casso to cooperate with the Committee, little is known about the agreement that was reached between Rodham and Vignali after the Barrangas dinner. What is clear is that Rodham agreed to help Carlos Vignali obtain a commutation from President Clinton, and that Horacio Vignali agreed to pay $200,000 to Rodham, contingent on Rodham's success in getting Carlos Vignali out of prison.

Horacio Vignali paid Rodham on January 23, 2001, three days after Carlos Vignali received his commutation. Vignali's bank records make it appear that Vignali originally wrote a check for $200,000 to Rodham & Fine, Rodham's law firm, but then converted those funds into a cashier's check.[273] That cashier's check was purchased by Maria Cisneros, the office manager for Horacio Vignali's Morvis Corvis Corporation.[274] It is unknown whether Vignali altered his payment method at Rodham's request. Hugh Rodham deposited the funds on January 24, 2001.[275]

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[267] *Id*. According to Valenzuela, Nora Lum, her sister, Kathy Nojima, and her daughter, Nickie, attended the dinner. Because Gene Lum was then in prison for a tax evasion conviction, he was apparently unable to attend the dinner. According to Valenzuela, Casso might have represented the Lums on various real estate matters. Gene and Nora Lum, who operated an Oklahoma natural-gas pipeline company, received 10-month sentences after pleading guilty in October 1997 to funneling $50,000 in illegal contributions to the 1994 re-election campaign of Senator Edward Kennedy and to an unsuccessful congressional campaign in Oklahoma. Federal Document Clearing House, Department of Justice, *New Jersey Attorney Sentenced in Campaign Finance Case*, Oct. 12, 2000 (summarizing Campaign Task Force prosecutions). They admitted making the donations through "straw donors," including their daughter and Michael Brown, son of the late Commerce Secretary Ron Brown. The fundraisers gave Michael Brown thousands of dollars in shareholder fees and corporate perks, and Brown then gave the money to friends to give to Kennedy's re-election campaign.

[268] Telephone Interview with Luis Valenzuela, Vice President, NAI Capital Commercial Real Estate Services (Oct. 30, 2001).

[269] *Id.*

[270] *Id.*

[271] *Id. See also* City National Bank Document Production (Check from Horacio C. and Luz C. Vignali to Rodham & Fine, P.A. for $4,200.00 (Nov. 22, 2000)) (Exhibit 30).

[272] Telephone Interview with Luis Valenzuela, Vice President, NAI Capital Commercial Real Estate Services (Oct. 30, 2001).

[273] *See* Turnberry Bank Document Production (Check from Horacio C. and Luz C. Vignali to Rodham & Fine for $200,000 (Jan. 23, 2001)) (Exhibit 31); City National Bank Document Production (Application for Cashier's Check (Jan. 23, 2001)) (Exhibit 32); First Union Document Production (Deposit Slip and Cashier's Check for $200,000 (Jan. 26, 2001)) (Exhibit 33).

[274] *See* City National Bank Document Production (Application for Cashier's Check (Jan. 23, 2001)) (Exhibit 31); City National Bank Document Production (Morvis Corvis Business Account Agreement (Mar. 5, 2001)) (Exhibit 34) (describing Maria Cisneros as "office manager").

[275] First Union Document Production (Deposit Slip and Cashier's Check for $200,000 (Jan. 26, 2001)) (Exhibit 33). In several contexts, Valenzuela appears to have been involved in funding Horacio Vignali's payment to Rodham. On January 12, 2001, Horacio Vignali wrote a check for $200,000 to City National Bank. On the memo of that check, Vignali noted "CC: Luis Valenzuela." *See* City National Bank Document Production (Exhibit 35). In a separate trans-

By December 2000, Hugh Rodham was apparently actively working on Carlos Vignali's clemency petition. This is evidenced by a December 9, 2000, letter to Rodham wherein Horacio Vignali forwarded a number of letters of support for Carlos Vignali.[276] The letter begins, "[p]ursuant to your conversation with Jaime Casso, I am enclosing the testimonial letters I have been able to secure as of today."[277]

2. Hugh Rodham's Initial Approach to the White House

In mid-December 2000, Rodham first approached Bruce Lindsey regarding the Vignali case. It appears that Lindsey was Rodham's main White House contact. Chief of Staff John Podesta testified that he did not know Hugh Rodham was advocating Carlos Vignali's petition. White House Counsel Beth Nolan equivocated about her knowledge of Hugh Rodham's involvement. Specifically, Nolan answered, "I don't think I knew that, but I may have known that."[278] Lindsey explained his interactions with Rodham in the Committee's March 1, 2001, hearing:

> Mr. Rodham called to ask me to take a look at a commutation application for Carlos Vignali, indicated that he was a first-time offender, that his application was supported by the Sheriff of Los Angeles County, that it was supported by the U.S. Attorney in Los Angeles.
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> * * *
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> [H]e also told me it was supported by the trial attorney who actually tried the case in Minnesota. That turned out probably not to be correct.
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> * * *
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> [He] [t]old me it was supported by the U.S. Attorney in Los Angeles, by the Sheriff of Los Angeles County, by the Cardinal Archbishop Diocese and Archdiocese in Los Angeles, Cardinal Mahoney, by several Congressmen, former

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action, on January 26, 2001, a cashier's check for $200,000 was purchased, apparently on Horacio Vignali's behalf, and made payable to Luis Valenzuela. *See* City National Bank Document Production (Exhibit 36). It appears that the check was later endorsed by Cisneros and ultimately deposited into Horacio's personal account. Accordingly, it appears that Vignali contemplated paying Valenzuela but changed his mind. *See* City National Bank Document Production (Deposit Slip for $200,000 (Jan. 26, 2001)) (Exhibit 37). In an interview with Committee staff, Valenzuela did not know that his name had been put on the checks until after it was done and, in any case, never came into possession of any of the money. Telephone Interview with Luis Valenzuela, Vice President, NAI Capital Commercial Real Estate Services (Oct. 30, 2001). But, Valenzuela speculated that his name appeared on both instruments because Vignali probably intended for him to act as an escrow agent for the money if/when Carlos Vignali was released. According to Valenzuela, this was probably done "so the representation could be made to [Hugh Rodham] that the money was in escrow." Valenzuela believes that such a representation was made only because "[Horacio] is a very cautious guy." Valenzuela believes that he was designated as an escrow agent without having been notified only because he and Horacio are "like brothers."

[276] NARA Document Production (Letter from Horacio Vignali to Hugh Rodham (Dec. 9, 2000)) (Exhibit 14).

[277] *Id.*

[278] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 412 (Mar. 1, 2001).

> Congressmen, city council people. . . . I indicated to him that it was—that he had served six years approximately. I indicated to Mr. Rodham that that was the kind of application the President actually was interested in looking at. He was interested in looking at first-time drug offenders who did not play major roles in the crime and that we would take a look at it.[279]

Based on Bruce Lindsey's testimony, in his initial presentation to Lindsey, Rodham made a number of serious misrepresentations. First, he claimed that Vignali was a first-time offender. As described above, this is plainly false because Vignali had two prior convictions and two other arrests. In addition, Vignali was an admitted gang member. Second, when Rodham told Lindsey that Vignali was a "first-time drug offender who did not play a major role in the crime," Rodham misstated the case against Vignali. As explained above, Vignali was a major source of cocaine and was sentenced accordingly. Third, Rodham informed Lindsey that the Vignali petition was "supported by the trial attorney who actually tried the case in Minnesota." While Lindsey could bring himself only to concede that Rodham's statement was "probably not correct," it is, in fact, utterly false.[280] The only question is whether Rodham's lie was his own creation, calculated to mislead the White House or whether he was fed the lie by the Vignalis or others working on their behalf. Rodham's lie regarding the position of the Minnesota U.S. Attorney's office was no small matter. It was apparently passed on by Lindsey to Meredith Cabe and Eric Angel, the White House lawyers working on the pardon. Both noted they had originally believed that the prosecutors supported the commutation and then learned that their information was not accurate.[281] Rodham's misinformation also found its way into White House documents analyzing the Vignali matter. In a chart dated January 9, 2001, a White House staffer stated that "acc. to representatives, U.S. Atty in Minneapolis (who prosecuted him) supports [clemency.]"[282]

After Lindsey spoke to Rodham, Lindsey referred the Vignali matter to Meredith Cabe, the Associate White House Counsel responsible for clemency issues. Cabe conducted a brief review of the two-page clemency petition but did not read any of the appendices submitted with the petition.[283] Cabe also stated that she frequently received materials from Lindsey regarding the Vignali case.[284] Pre-

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[279] *Id.* at 361–62.

[280] There are only three possible prosecutors Rodham could have been referring to: Todd Jones, Andrew Dunne, or Denise Reilly. Committee staff interviewed Jones and Reilly, and they were strongly opposed to the commutation. Committee staff were not able to interview Dunne, but Jones informed Committee staff that Dunne helped him prepare the Minnesota U.S. Attorney Office's formal opposition to the Vignali commutation. Therefore, it is certain that he opposed the commutation as well. It is clear now that no attorney involved in prosecuting Vignali supported the commutation, and it was just as clear when Hugh Rodham made his misrepresentation to the White House.

[281] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[282] NARA Document Production (chart of former Associate White House Counsel Eric Angel) at 6 (Exhibit 38).

[283] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[284] *Id.*

sumably, Lindsey received these materials from Hugh Rodham and other outsiders interested in the Vignali case.

Despite Hugh Rodham's efforts to mislead, the White House was able to obtain accurate information about Carlos Vignali. Thanks to the Pardon Attorney, the White House learned that Carlos Vignali had prior convictions and that the U.S. Attorney in Minnesota opposed his commutation. However, it is surprising that having caught Hugh Rodham providing patently false information, the White House staff would go ahead and recommend that Rodham's client receive a commutation anyway.

3. The Justice Department's Input on the Vignali Case

Long before the Vignali case was brought to the White House's attention by Hugh Rodham, staff in the Justice Department Pardon Attorney's office had been considering the Vignali petition. The petition was initially filed with the Department in August 1998. Some point after that date, the Pardon Attorney's office conducted a background investigation of Vignali. Such a report would typically involve contacts with the prosecutors and FBI, a review of a report from the Bureau of Prisons, the presentence report, and the judgment and commitment order.[285] In the fall of 2000, the Pardon Attorney forwarded a draft report to the Deputy Attorney General recommending the denial of Vignali's clemency petition. A staff member of the Deputy Attorney General would typically review the Pardon Attorney's recommendation and provide the Pardon Attorney's recommendation and her own comments to the Deputy Attorney General for his review. The Deputy Attorney General could then sign off on the Pardon Attorney's recommendation and provide it to the President for his consideration.

However, the usual Justice Department process was not followed in the Vignali case. In November 2000, the White House instructed the Deputy Attorney General's office to stop sending recommendations for clemency denials to the President.[286] The White House told the Deputy Attorney General's office that it was interested in favorable clemency recommendations, specifically favorable pardon recommendations, and to place a priority on forwarding such favorable recommendations to the White House.[287] As a result of this directive, the Deputy Attorney General stopped forwarding to the White House negative clemency recommendations prepared by the Pardon Attorney.[288]

This was almost the fate of the Pardon Attorney's report regarding Carlos Vignali. At some point in the fall of 2000, the Pardon Attorney prepared a report that strongly recommended against the Vignali commutation.[289] The report was forwarded to the Deputy Attorney General's office, where it was reviewed by Deborah Smolover, the Associate Deputy Attorney General responsible for supervision of the Office of the Pardon Attorney. Smolover stated that the Vignali report was not signed off on by the Deputy Attorney General or forwarded to the White House because it fell into

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[285] Interview with Deborah Smolover, Associate Deputy Attorney General, Department of Justice (Mar. 12, 2001).
[286] *Id.*
[287] *Id.*
[288] *Id.*
[289] *Id.*

the category of reports that the White House staff had earlier said it did not want to receive—negative clemency recommendations.[290] However, after an inquiry from the Pardon Attorney, Roger Adams, Smolover sent the Vignali report back to Adams and told him that he could sign off on the memo and send it to the White House.[291] Adams believed it was important for the Justice Department to be on the record as opposed to the Vignali commutation, so he signed the memo and sent it to the White House on January 12, 2001.[292]

The failure of the Deputy Attorney General to sign off on the recommendation against the Vignali commutation is disturbing. Deborah Smolover could not recall any cases other than Vignali's where the Pardon Attorney, rather than the Deputy Attorney General, signed off on a recommendation memorandum.[293] Moreover, she did not ascribe any significance to the fact that Pardon Attorney Roger Adams, rather than Eric Holder, signed it. However, Roger Adams stated that Holder refused to sign two or three denial recommendations because he "didn't want to sign any more denials."[294] But, Smolover stated that Holder would not have allowed Adams to send any recommendation with which he did not agree to the White House.[295] In addition, Smolover could not offer any reasonable explanation why Holder refused to sign the denial recommendation at issue but allowed Adams to send it to the White House under Adams' own signature. In the Marc Rich case, Holder's actions made it clear that he was attempting to please his superiors in the White House while trying to maintain some credibility as a prosecutor serious about law and order. He failed miserably in the Rich case, first by failing to warn prosecutors that the Rich case was being considered and then by taking the position that he was "neutral, leaning towards favorable" on the pardon if it helped the Middle East peace process. It appears that Holder took a similarly irresolute position in the Vignali case—allowing his subordinate to oppose the Vignali commutation while refusing to go on the record against a commutation the President apparently wanted to grant and the President's own brother-in-law supported.

The report recommending against the Vignali commutation was an important one. For the first time, it made the White House aware of a number of key facts in the Vignali case,[296] including Vignali's role in the offense and the basis for his sentencing. Adams pointed out that Vignali had two prior convictions and two prior arrests and that he had not disclosed the arrests on his petition, as was required. Adams included in his report the opposition of the Minnesota U.S. Attorney's Office:

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[290] *Id.*

[291] Interview with Roger Adams, Pardon Attorney, Department of Justice (Feb. 27, 2001).

[292] *Id.*

[293] Interview with Deborah Smolover, Associate Deputy Attorney General, Department of Justice (Mar. 12, 2001).

[294] Interview with Roger Adams, Pardon Attorney, Department of Justice (Feb. 27, 2001).

[295] Interview with Deborah Smolover, Associate Deputy Attorney General, Department of Justice (Mar. 12, 2001).

[296] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Carlos Anibal Vignali, Jr. (Jan. 12, 2001)) (Exhibit 4). Adams noted that "Petitioner's defense counsel used th[e] fact [that he was the sole Hispanic charged] to argue his client's innocence to the jury, characterizing the case as involving a 'black drug dealing network,' and emphasizing that petitioner was not black."

> United States Attorney B. Todd Jones strongly opposes clemency for petitioner, noting that petitioner's persistent claims of innocence are undermined by [the] strength of the evidence presented against him:
>
> > Th[e] testimony [of the cooperating coconspirators] was consistent and independently corroborated by Title III wiretap interceptions, search warrant evidence and police surveillance. The evidence clearly established that Carlos Vignali, Jr., was a member of the charged drug conspiracy and facilitated the distribution of narcotics in the Twin Cities by supplying Evans, Williams and Hopson with substantial quantities of cocaine from Los Angeles, California.
>
> Mr. Jones noted that the two main cooperating coconspirators, Williams and Evans, received sentences of 180 months and 95 months respectively. He concluded by stating:
>
> > The sentence imposed by Judge Doty reflects the seriousness of the defendant's role in a large scale narcotics conspiracy as the California source of cocaine to Evans, Williams, and Hopson. To my knowledge Vignali has refused to accept personal responsibility for his criminal activities and has never expressed sincere remorse for his conduct. In light of the exacting standards generally applicable in pardon cases, this case does not warrant such a commutation.[297]

After quoting the Minnesota U.S. Attorney, Roger Adams offered his position on the Vignali commutation:

> In applying for clemency, petitioner has to a large degree merely recycled arguments already rejected by the jury and courts. He continues to deny his guilt, and his petition contains misleading statements and misstatements of fact. As for his allegation that he has no connection to Minnesota, the jury convicted him of the offense of supplying large quantities of cocaine to distributors in that state. Moreover, his contention that his sentence is excessive fails in light of the sentencing record, which establishes that the district court accorded him leniency in refusing to adopt two enhancements recommended by the presentence report. For all these reasons, I recommend that you deny his petition.[298]

It appears that the Pardon Attorney's report had an impact on the White House staff. Next to the portion of the report discussing Judge Doty's sentence of Vignali, a White House staffer wrote a note reading, "He recommended other cases—was he contacted?" [299] Apparently, members of the White House staff were aware that

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[297] *Id.*
[298] *Id.*
[299] *Id.*

Judge Doty recommended commutations for Serena Nunn and Kim Willis, making his opposition to the Vignali commutation even more significant. Despite this inquiry from a White House staffer, Judge Doty was never contacted. More importantly, at the end of Roger Adams' report, a White House staffer wrote, "Need to XC for Bruce. Definitely isn't simply making a loan—& do we believe the gang thing? USA is actually against—maybe we shd call & ck the recs we've been told of?"[300] Apparently, the report dispelled any beliefs the White House might have had regarding Carlos Vignali's story that the $25,000 he had been paid was simply payback on a loan he had made to friends. The notation "USA is actually against—maybe we shd call & ck the recs we've been told of" indicates that the Adams report was the first clear enunciation received by the White House that the Minnesota U.S. Attorney was actually opposed to the commutation. It also indicates that learning of this fact cast some doubt on other information that had been shared with the White House, likely by Hugh Rodham. Despite the clear doubts expressed by the White House staffer's notes on the Adams memo, apparently little was done to follow up on those doubts. The White House staff never followed up with either the prosecutors or the judge in the Vignali case.

4. The Final Decision on the Vignali Commutation

a. Contacts Between the White House and Interested Parties

In addition to reviewing the Pardon Attorney's comments on the Vignali commutation petition, White House staff contacted a number of individuals regarding Vignali. First, Meredith Cabe recalls that Representative Xavier Becerra was advocating for the Vignali commutation. [301] According to other White House staff, Representative Becerra "peppered" the White House with calls on Vignali's behalf.[302] Together with her colleague Eric Angel, Cabe also spoke to U.S. Attorney Alejandro Mayorkas. According to Cabe, Mayorkas said he supported the petition but admitted he was not familiar with the details of the case.[303] Cabe also recalls that Mayorkas stated that most drug sentences were disproportionate and that this one likely was as well.[304] Eric Angel recalls that Mayorkas expressed support for the Vignali family and opined that Carlos Vignali would have a strong support network if he were released. Angel also recalled that Mayorkas made general comments about the length of Vignali's sentence and a statement to the effect that "a lot of these sentences are too long and this one was long too."[305]

In an interview with Committee staff, Dawn Woollen, Deputy White House Counsel Bruce Lindsey's administrative assistant, conceded that she wrote a note to Lindsey that indicated, among

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[300] *Id.*

[301] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[302] Richard Serrano and Stephen Braun, *Working the American System*, L.A. TIMES, Apr. 29, 2001, at A1.

[303] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[304] *Id.*

[305] Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

other things, that "Sheriff Baca from LA is more than happy to speak with you about him but is uncomfortable writing a letter offering his full support."[306] According to Woollen, her note reflected a telephone conversation with Hugh Rodham around early January 2001.[307] Within a week of having spoken with Hugh Rodham, Woollen "very briefly" spoke to Sheriff Baca about the Vignali matter.[308] Originally, Sheriff Baca left a telephone message for Lindsey, but, as per Lindsey's request, Woollen returned Baca's call.[309] During that conversation, according to Woollen, Sheriff Baca "expressed his support for the Vignali commutation."[310] According to Woollen, Baca also told her he was uncomfortable writing a letter offering his full support for the petition but did not say why.[311]

Contrary to statements Baca has made to this Committee, according to Woollen, at no point during his conversation with her did he say that he was unfamiliar with the facts associated with Vignali's clemency petition or cite any unfamiliarity with the underlying conviction as a basis for not commenting on Vignali's clemency petition.[312] Finally, according to Woollen, Sheriff Baca did not express any support for Carlos Vignali's father or even mention the name "Horacio."[313] The degree to which Baca and Woolen disagree about the nature of their conversation gives rise to serious concern.

Despite the general nature of the White House's discussions with Mayorkas and Baca, their support has been described as being important in the decision to grant clemency to Vignali. Cabe understood the qualifications offered by Mayorkas but still viewed his support as "significant" because "few prosecutors advocate clemency in any form."[314] Similarly, Bruce Lindsey stated:

> I originally was probably negative. . . . But after I received a call from the sheriff of Los Angeles and our office reached out to the U.S. Attorney in the central district of California and Los Angeles, I decided that given the community support and their position that into the county in which he would go to live, that they would be aware of the crime situation, if you will, in their community, and if they were not concerned about him coming back to their com-

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[306] Interview with Dawn Woollen, Administrative Assistant to Deputy White House Counsel Bruce Lindsey, the White House (Sept. 25, 2001). NARA Document Production (Handwritten Note from Woollen to Lindsey) (Exhibit 22).

[307] Interview with Dawn Woollen, Administrative Assistant to Deputy White House Counsel Bruce Lindsey, the White House (Sept. 25, 2001).

[308] *Id.* This conversation with Sheriff Baca was the witness' only conversation with Sheriff Baca about the Vignali clemency matter.

[309] *Id.*

[310] *Id*. With Committee staff, Woollen was unequivocal about her understanding about Baca's support for the petition. When asked by Committee staff what the specific basis was for her understanding as to Baca's position, Woollen replied, "Sheriff Baca said that he supported [the commutation]." Woollen further stated that "it was clear that Sheriff Baca was supporting the commutation."

[311] *Id.*

[312] *Id.*

[313] *Id.*

[314] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

munity, that I thought it was an appropriate commutation.[315]

The White House's reliance on the support for the commutation voiced by Baca and Mayorkas should be juxtaposed against the fact that the White House made no attempt to speak to the prosecutors or judge involved in the Vignali case. Judge David Doty, who sentenced Vignali, has stated that he was surprised by the commutation[316] and that, if the White House had contacted him, he would have argued against a commutation for Vignali.[317] Judge Doty believes Vignali was an unsuitable candidate for clemency first because his sentence was appropriate: "Carlos deserved what he got . . . I hit him in the middle, not in the low end. . . . And I didn't max him out."[318] Judge Doty also noted that Vignali was not a small-time offender: "[He] provided funds to the conspiracy, provided places and was involved in the direct transfers. He was a big player. He was one of the top two or three defendants."[319] Judge Doty also pointed out that Carlos Vignali had never admitted his crime, noting that Vignali "was non-repentant." Even after I sentenced him, he claimed he had been railroaded."[320] Judge Doty's strong position against the Vignali commutation is even more significant given his longstanding opposition to mandatory minimum sentences for drug offenses and his support for clemency for two other drug offenders he had sentenced.[321]

Similarly, the White House never consulted the lawyers who prosecuted Vignali. Meredith Cabe stated that she did not consult with the prosecutors because the Justice Department had already been in contact with them and their position on the commutation was already clear. However, Cabe's explanation is less than satisfactory. Just because the White House knew that the prosecuting office opposed a grant of clemency for Vignali did not eliminate the need to actually speak to the prosecutors who had tried the case. If the White House staff had discussed the grant of clemency with the U.S. Attorney or his staff, it is possible that the prosecutors could have explained the scope of Vignali's drug-dealing activities, his utter lack of remorse, or the suspicions regarding his other drug-dealing activities or those suspected of his father.

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[315] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 426 (Mar. 1, 2001).

[316] *Los Angeles Cardinal Regrets Role in Pardon*, N.Y. TIMES, Feb. 13, 2001, at A26.

[317] *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. TIMES, Feb. 11, 2001, at A1.

[318] Bob von Sternberg and Pam Louwagie, *Judge Who Sentenced Dealer in Minnesota Questions Clemency*, STAR TRIB. (Minneapolis, MN) Feb. 15, 2001, at A1.

[319] Richard Serrano and Stephen Braun, *Vignali Case Built on Informants, Wiretaps*, L.A. TIMES, Feb. 15, 20001, at A1.

[320] Richard Serrano and Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar,* L.A. TIMES, Feb. 11, 2001, at A1.

[321] Bob von Sternberg and Pam Louwagie, *Tale of a Prodigal Father*, STAR TRIB. (Minneapolis, MN) Feb. 18, 2001, at A1; Bob von Sternberg and Pam Louwagie, *Judge Who Sentenced Dealer in Minnesota Questions Clemency*, STAR TRIB. (Minneapolis, MN) Feb. 15, 2001, at A1. Judge Doty wrote in support of grants of clemency for Serena Nunn and Kim Allen Willis, two small-time drug offenders who had been sentenced to 15 year terms in prison. Judge Doty as well as prosecutors and investigators involved in the Nunn and Willis cases agreed that they were truly low-level drug offenders who had been caught up in a larger conspiracy and were suitable candidates for clemency.

b. Contacts Between the White House and Hugh Rodham

In the final days of the Clinton Administration, it appears that Hugh Rodham had several contacts with White House staff about the Vignali matter. Rodham spoke to Bruce Lindsey twice more about Vignali after his initial conversation in December 2000 and Meredith Cabe once about Vignali. Rodham's counsel described the two subsequent contacts with Bruce Lindsey as follows: "he subsequently submitted and discussed letters of recommendation, and he made a final follow up inquiry."[322] Meredith Cabe stated that Rodham called her about the Lums, for whom Rodham had been requesting executive clemency, and brought up Vignali.[323] Cabe recalled that Rodham was concerned that the White House was getting bad information about Vignali and believed that someone had accused Vignali of being in a gang.[324]

No one on the White House staff has made it clear how Rodham's lobbying was viewed by the President or his staff. In their defense, White House staff have claimed that they never figured out that Rodham represented Vignali or was receiving a large fee from Vignali for his work. When questioned in a Committee hearing, Lindsey was vague about whether the President was informed about Rodham's role in the Vignali matter:

> Mr. LATOURETTE. I am interested in what took place in front of the President, and the meeting that you remember, Ms. Nolan, whether these guys were there or weren't there, was the fact that Hugh Rodham was advocating this position, or was advocating that Mr. Vignali receive a pardon [or] commutation, was that discussed in your presence? Was Hugh Rodham's name invoked to the President of the United States in this meeting?
>
> Ms. NOLAN. I don't know, Mr. LaTourette.
>
> Mr. LATOURETTE. How about you, Mr. Lindsey?
>
> Mr. LINDSEY. I don't recall. I don't have a specific memory of mentioning it. I wouldn't have hesitated to mention it. I just don't recall.
>
> Mr. LATOURETTE. You don't remember. How about you, Mr. Podesta?
>
> Mr. PODESTA. With the caveat that I gave earlier, in the meeting I was in where Vignali was discussed, Mr. Rodham's name did not come up.[325]

The hazy recollection of senior White House staff therefore makes it impossible to know whether Rodham's name was invoked in the discussions that White House staff had with the President.

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[322] Letter from Nancy Luque, Counsel for Hugh Rodham, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 28, 2001) at 2 (within Appendix I).

[323] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[324] *Id.*

[325] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform,* 107th Congress 412 (Mar. 1, 2001).

c. Hugh Rodham's Invocation of First Lady Hillary Clinton

One critically important document makes it clear that, at a minimum, Hugh Rodham invoked the First Lady's name in lobbying for Vignali's commutation. That document, a note handwritten by Dawn Woollen, the administrative assistant of Deputy White House Counsel Bruce Lindsey, states, "Hugh says this is very important to him and the First Lady as well as others. Sheriff Baca from LA is more than happy to speak with you about him but is uncomfortable writing a letter offering his full support."[326]

In an interview with Committee staff, Woollen recalled having spoken with Hugh Rodham about the Vignali matter on at least five occasions.[327] After one such conversation, around early January 2001, Woollen wrote the previously described note to Lindsey.[328] When presented with that note during her interview with Committee staff, Woollen confirmed that the note was accurate.[329] But, independent of what she wrote on the note, Woollen could not recall what Rodham said about the First Lady's knowledge of the Vignali issue.[330]

At the very least, Woollen's note reflects attempts by Hugh Rodham to capitalize financially on his association with the First Family by invoking his sister's support for the Vignali petition without her knowledge. After Hugh Rodham's role in clemency proceedings pending before President Clinton was publicly disclosed, Senator Hillary Rodham Clinton asserted that she "knew nothing about [her] brother's involvement in these pardons" and that she "did not have any involvement in the pardons that were granted or not granted."[331] In fact, when Senator Clinton was asked by the media about pardons President Clinton granted in the final hours of his administration, she replied, "I was very disturbed to learn that my brother, Hugh Rodham, received fees in connection with two clemency applications. . . . Hugh did not speak with me about these applications."[332] When asked about President Clinton's last-minute pardons generally, she stated, "you'll have to talk with people who were involved in making them, and that leaves me out."[333] Indeed, according to Senator Clinton, her involvement in pardon matters pending before the President was limited to passing on "envelopes" that were given to her.[334] The Woollen note leaves only two possibilities: (1) that Hugh Rodham indeed told Hillary Clinton about his efforts on behalf of Carlos Vignali and that Hillary Clinton was not being candid when she stated that Hugh did not speak

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[326] NARA Document Production (Handwritten Note from Dawn Woollen, Administrative Assistant to Deputy Chief of Staff Bruce Lindsey, the White House, to Bruce Lindsey, Deputy Chief of Staff, the White House) (Exhibit 22).

[327] Interview with Dawn Woollen, Administrative Assistant to Deputy Chief of Staff Bruce Lindsey, the White House (Sept. 25, 2001). All of those conversations took place over the phone. *Id.*

[328] *Id.*

[329] *Id.*

[330] *Id.*

[331] Sumana Chatterjee, *Hillary Clinton Addresses Pardons Involving Brother, Campaign Aide*, KNIGHT RIDDER (Washington Bureau) Feb. 23, 2001.

[332] James V. Grimaldi and Peter Slevin, *Hillary Clinton's Brother Was Paid for Role in 2 Pardons,* WASH. POST, Feb. 22, 2001, at A1.

[333] Jackie Judd, *Senator Hillary Clinton Answers Questions About Her Brother's Involvement in Two Presidential Pardons,* ABC World News Tonight, Feb. 22, 2001.

[334] Sumana Chatterjee, *Hillary Clinton Addresses Pardons Involving Brother, Campaign Aide*, KNIGHT RIDDER (Washington Bureau) Feb. 23, 2001.

to her about Vignali; or (2) Hugh Rodham was lying when he told Woollen that the Vignali case was "very important" to the First Lady. The first possibility raises serious questions about the conduct of the former First Lady, and the second possibility raises serious questions about the conduct of Hugh Rodham.

d. The President's Decision to Grant the Commutation

White House staff have been vague in describing the process the Vignali commutation went through. Cabe indicated that staff had a mixed opinion regarding the Vignali case until the end of the process, when they were all in agreement to recommend Vignali for a commutation.[335] White House documents seem to confirm vacillation in the White House's position on the matter. One document about the Vignali case states, "Lean no,"[336] and another states, "STAFF: mixed(?)"[337] Cabe also indicated that Vignali was considered together with a number of other drug cases in which the defendant had been "oversentenced."[338] Cabe recalls that others in this group were Lau Ching Chin, Derek Curry, Peter Ninemire, and Loretta De-Ann Kaufman.[339] These parts of Cabe's recollection are confirmed by documents. A chart of potential pardons and commutations maintained by Associate White House Counsel Eric Angel with the heading "Disparate Sentencing Commutation Cases" includes Vignali's name with the notations:

> Arg is he is not guilty—loaned $25K to a friend, which he args was falsely interpreted to be part of drug conspiracy; aged 24 at time of offense, with no significant criminal record; args he had minor role; DOJ states that petitioner was supplier for major cocaine distribution organization and has two 1989 convictions for fighting in public place and vandalism; 1990 arrest for corporal injury to spouse or cohabitant, dismissed. DOJ says U.S. Attorney strongly opposes. DOJ recommends denial.[340]

A separate column of Angel's chart discusses who supported the Vignali commutation:

> Reps. Becerra, Torres ask for "every consideration" because parents are friends; Council of CA State Legislators also ask for consideration; Archbishop of LA supports; acc. To representatives, U.S. Atty in Minnesota (who prosecuted him) supports; LA Sheriff Lee Baca and LA US Atty Alejandro Mayorkas support; Maria E[chaveste] has inquired.[341]

Given President Clinton's silence regarding his pardons and commutations, it is impossible to know which factors led to his de-

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[335] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).
[336] NARA Document Production (chart of "Disparate Sentencing Commutation Cases") at 21 (Exhibit 39).
[337] NARA Document Production (alternate chart of "Disparate Sentencing Commutation Cases" at 11 (Exhibit 40).
[338] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).
[339] *Id.*
[340] NARA Document Production (Exhibit 39).
[341] *Id.*

cision to commute Vignali's sentence. Clearly, there were a number of outside factors contributing to the President's decision: a White House staff generally supportive of the decision; pressure, including misleading statements, from Hugh Rodham; and pressure from California political figures. On January 20, 2001, President Clinton commuted Carlos Vignali's sentence to time served, reducing his 15-year sentence to only about 5 years.

5. The White House Has No Justification for the Vignali Commutation

The process by which the President actually reached the decision to grant the Vignali commutation is still a mystery. Apparently, the President did not reach his decision to grant the commutation until January 19, after a meeting with his staff. Since the President has never answered questions about the Vignali matter, the Committee has not been able to determine which facts influenced his decisionmaking. The President's failure to speak out on the Vignali matter leaves a number of key questions unanswered:

- To what extent did Hugh Rodham's representation of Carlos Vignali play a role in the President's decision to grant Vignali's commutation?
- Did First Lady Hillary Rodham Clinton support the effort to obtain the Vignali commutation?
- Did the President or the First Lady know that Rodham was being paid $200,000 for obtaining the Vignali commutation?
- When did the President make the decision to commute Vignali's sentence and why?

In the absence of answers to these questions, the Committee must examine the arguments offered by the White House to justify the Vignali commutation. These arguments, set forth below, are all spurious.

"Vignali was a minor participant in a large drug conspiracy." It appears that the White House based its decision on the belief that Vignali was only a minor participant in the Minnesota-area drug dealing scheme. As Lindsey testified before the Committee:

> I actually believe the judge made a specific finding that [Carlos Vignali] was responsible for five to 15 kilos, which is I think 11 to 33 pounds. I think the total amount of money he was involved with was $2,500—$25,000 excuse me. So I don't think it is correct that he was responsible for $800,000; and in fact, I believe there was a specific finding that he was not. There was also I believe a specific finding that he was not an organizer, leader of the conspiracy.[342]

In applying the federal sentencing guidelines to Vignali's case, Judge Doty indeed attributed five to fifteen kilograms of cocaine to Vignali, rather than the fifteen to fifty kilograms suggested in the pre-sentence report.[343] Judge Doty nevertheless enhanced Vignali's

[342] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Congress 362 (Mar. 1, 2001).
[343] Judgment in a Criminal Case, *U.S. v. Vignali* (D. Minn. July 17, 1995) (Exhibit 3).

offense level because he found that Vignali committed perjury by denying that he was involved in the distribution of cocaine.[344] The judge also concluded that Vignali's role as a supplier of cocaine tended to make him more culpable than other co-defendants.[345] These conclusions led the judge to give Vignali a sentence on the upper end of the guideline range.[346] Therefore, Bruce Lindsey's heavy reliance on Judge Doty's finding that Vignali was responsible for only five to fifteen kilograms of cocaine appears highly disingenuous. Indeed, Judge Doty sentenced Vignali to 175 months imprisonment despite his belief that the evidence adduced at trial supported a finding that Vignali supplied between five and fifteen kilograms of cocaine. Lindsey completely ignored the judge's finding that Vignali perjured himself when he denied any involvement in supplying narcotics. For Lindsey to accept that Vignali was responsible for supplying between five and fifteen kilograms of cocaine would have required that Lindsey accept that Vignali perjured himself at trial and refused to accept responsibility for what he had done. It is difficult to believe that Lindsey would recommend that such a person be granted executive clemency.[347]

The White House's reliance on Judge Doty's findings regarding the amount of cocaine Vignali supplied was irresponsible and misleading for another reason. The judge's finding was a highly technical decision relating to the offense level computed under the Federal Sentencing Guidelines. Under those guidelines, a different base offense level is applied if the offender supplies between 5 and 15 kilograms of cocaine than if he deals between 15 and 50 kilograms of cocaine. When deciding whether to grant Vignali's clemency request, one would think the White House would be more interested in an evaluation of who Vignali was and what he was doing in a generalized sense than in trying to defeat a technical application of the sentencing guidelines. If the White House had wanted such an evaluation, it could have turned either to the Pardon Attorney's recommendation or the submission of the U.S. Attorney in Minnesota. In his submission, U.S. Attorney Todd Jones explained that Vignali was involved in a far larger network of drug dealing than that which was alleged in the case against Vignali in Minnesota. As former U.S. Attorney Todd Jones noted in an interview with the Committee, "the fact the Vignali was convicted as a Category 1 dope dealer doesn't mean that he's innocent, just that he was smart."[348]

"Vignali's sentence was disproportionate in comparison to his co-conspirators." In testimony before the Committee and in various public statements, the White House has argued that the leniency granted to similarly situated codefendants provided a basis for the

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[344] *Id.*
[345] *Id.*
[346] *Id.*
[347] Judge Doty was never contacted by the White House about Vignali's clemency application. *L.A. Cardinal Regrets Role in Pardon*, N.Y. TIMES, Feb. 13, 2001, at A26; Richard A. Serrano and Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. TIMES, Feb. 11, 2001 at A1. Referring to the Vignali commutation, Judge Doty stated "I have no idea why it happened, but we are all aghast." *Los Angeles Cardinal Regrets Role in Pardon*, N.Y. TIMES, Feb. 13, 2001 at A26. According to Judge Doty, Carlos Vignali never acknowledged responsibility or showed remorse for his crime, "He was non-repentant. . . . Even after I sentenced him, he claimed he had been railroaded." Richard A. Serrano and Stephen Braun, *Drug Kingpin's Release Adds to Clemency Uproar*, L.A. TIMES, Feb. 11, 2001 at A1.
[348] Telephone Interview with Todd Jones, Partner, Greene Espel (May 2, 2001).

President's grant of clemency to Carlos Vignali. This position is wholly without merit. A number of Carlos Vignali's co-conspirators received leniency because they, unlike Vignali, cooperated with law enforcement. Vignali, on the other hand, took his chances with the jury and lost, receiving 175 months in prison. A brief review of the sentences given to other major defendants in the Vignali case demonstrates that Vignali's sentence was fair and proportionate.

- Gerald Williams: Williams was convicted of conspiring to distribute cocaine. Judge Doty found that he was the main distributor, organizer, and leader of the drug conspiracy. The government recommended an imprisonment term of 360 months to life, but Williams received a sentence of 120 months. Judge Doty departed from guideline range because of "substantial and valuable assistance" Williams provided to law enforcement in breaking up the distribution ring.
- Dale Evans: Evans was convicted of conspiring to distribute cocaine. Evans was a California source to distributors in Minnesota. At trial, Evans testified that he was sending an average of one to two kilos of cocaine to Minnesota per week during 1993. Evans obtained that cocaine from Jonathan Gray and Vignali. The government recommended an imprisonment term of 135–168 months, but Evans received a sentence of 95 months. Judge Doty departed from the guideline range because Evans provided law enforcement with "substantial and valuable" assistance in breaking up the ring.
- Shirley Williams: Williams was convicted of conspiring to distribute between 15 and 50 kilos of cocaine for finding buyers of cocaine for her son, Gerald. The government recommended a 151–188 month term of imprisonment, but Judge Doty sentenced Williams to 75 months in jail. Judge Doty ordered a downward departure because of the substantial assistance Williams provided law enforcement.
- Melvin Campbell: Melvin Campbell was convicted of using a telephone to conspire in selling cocaine. Campbell was another California source to distributors in Minnesota. He distributed large amounts of cocaine and cocaine paste with Shirley and Gerald Williams and cooked crack for distribution. The government recommended imprisonment for 12–18 months, but Judge Doty sentenced Campbell to 48 months. He ordered an upward departure because of Campbell's significant involvement in the conspiracy, the substantial amount of drugs he distributed, and his criminal history.
- Jonathan Gray: Jonathan Gray was convicted of conspiring to distribute more than 5 kilos of cocaine. In 1993, Gray and Vignali supplied cocaine from California to Dale Evans in Minnesota. The government recommended 151–188 months in jail, and Judge Doty sentenced Gray to 170 months. Gray was the defendant most similarly situated to Vignali as he was a California source of cocaine for the Minnesota distribution network and refused to cooperate with law enforcement. Gray's sentence was almost identical to Vignali's.

- Tony Speank: Tony Speank was convicted of conspiring to manufacture and distribute between 1.5 and 5 kilos of cocaine and cocaine base. The government recommended a sentence of 210–262 months, but Judge Doty sentenced Speank to 58 months. Judge Doty granted a downward departure because of the "substantial and valuable" assistance Speank provided law enforcement.
- Todd Hopson: Todd Hopson was convicted of conspiring to distribute cocaine; using facilities in interstate commerce to promote a drug enterprise; possession with intent to distribute and distribution of more than 5 kilos of cocaine; and use of telephone for promotion of drug enterprise. The government recommended 235–293 months in jail. Judge Doty sentenced Hopson to 235 months imprisonment. Judge Doty found that the low end of the range adequately reflected the nature and circumstances of Hopson's offense and his past criminal conduct.

As shown above, in those cases where Judge Doty exercised leniency in sentencing codefendants who were at least as culpable as was Vignali, Judge Doty specifically found that each of those codefendants provided "substantial and valuable" assistance to law enforcement. By contrast, Carlos Vignali and Todd Hopson, both of whom were charged with conspiring to distribute substantial amounts of cocaine and various other federal narcotics offenses, chose not to cooperate. Furthermore, they failed to express the least remorse about or assume responsibility for their roles in the distribution ring. As such, there could have been no reasonable expectation of leniency from the sentencing judge. Accordingly, the White House's position that Vignali's sentence was overly harsh or disproportionate as compared with his codefendants is wholly without merit. Having thoroughly considered the available evidence, Judge Doty sentenced Vignali under the applicable standards set forth under the law.

"Vignali's sentence was an unfair and overly harsh result of mandatory minimum sentencing laws." Although the rationale for President Clinton's commutation of Carlos Vignali's sentence remains unclear, the former president has said he believes mandatory sentences "in many cases are too long for nonviolent offenders."[349] Documents and statements obtained by the Committee indicate that the White House considered Vignali's petition together with a number of other drug cases in which the defendant had been "oversentenced."[350] Associate White House Counsel Meredith Cabe, who was responsible for clemency matters for the White House Counsel's Office, recalled that others in that group were Lau Ching Chin, Derek Curry, Peter Ninemire, and Loretta DeAnn Kaufman.[351] Cabe's appreciation that Vignali's petition was considered as a "mandatory minimum" case is borne out by a chart of potential pardons and commutations maintained by Associate White

[349] Bob von Sternberg and Pam Louwagie, *Judge Who Sentenced Dealer in Minnesota Questions Clemency; Clinton Commuted Cocaine Supplier Carlos Vignali's Sentence*, STAR TRIB. (Minneapolis, MN) Feb. 15, 2001.

[350] Interview with Meredith Cabe, former Associate Counsel to President, the White House (Mar. 16, 2001).

[351] *Id*

House Counsel Eric Angel, who worked with Cabe on clemency matters.[352]

U.S. District Judge David Doty, who sentenced Vignali, has long been a critic of mandatory federal sentencing guidelines for drug offenses.[353] In Judge Doty's view, "most drug sentences are exceedingly long and onerous."[354] But, in Vignali's case, Judge Doty felt that "Carlos deserved what he got."[355] In explaining the sentence he imposed on Vignali, Judge Doty stated, "I based the sentence on his criminal history score—he didn't have much. And I kicked it up because of the amount of drugs involved."[356] According to Doty, the sentence he imposed was slightly more than the midpoint of the guideline range.[357] Doty observed, "I hit him in the middle, not in the low end. And I didn't max him out."[358]

D. The Aftermath of the Vignali Commutation

1. The Response from Hugh Rodham

The Vignali commutation proved to be almost as controversial as the Marc Rich and Pincus Green pardons. News of Hugh Rodham's involvement in the Vignali matter first surfaced around February 21, 2001. Former President Clinton issued a statement indicating that he and former First Lady Hillary Rodham Clinton were unaware that Hugh Rodham had been paid for his work on the Vignali and Braswell matters: "Neither Hillary nor I had any knowledge of such payments . . . We are deeply disturbed by these reports and have insisted that Hugh return any monies received."[359] Hillary Clinton added, "I was very disturbed to learn that my brother, Hugh Rodham, received fees in connection with two clemency applications[.] Hugh did not speak with me about these applications."[360] Rodham responded to the statement from the former President and Senator Clinton with a statement from his own attorney, Nancy Luque:

> My client, Hugh Rodham, today acceded to his family's request that he return legal fees earned in connection with pardon requests. My client did not advise President or Senator Clinton of his involvement in these requests. He believes they were unaware until this week of his work on his client's behalf. Hugh Rodham has done absolutely nothing wrong. He has returned these fees solely because his family asked that he do so. Their request, presumably made because of the appearance of impropriety, is one he cannot ignore. There was, however, no impropriety in these matters.[361]

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[352] *See, e.g.*, NARA Document Production (chart of "Disparate Sentencing Commutation Cases") (Exhibit 39).

[353] Bob von Sternberg and Pam Louwagie, *Judge Who Sentenced Dealer in Minnesota Questions Clemency; Clinton Commuted Cocaine Supplier Carlos Vignali's Sentence*, STAR TRIB. (Minneapolis, MN) Feb. 15, 2001.

[354] *Id.*

[355] *Id.*

[356] *Id.*

[357] *Id.*

[358] *Id.*

[359] James V. Grimaldi and Peter Slevin, *Hillary Clinton's Brother Was Paid for Role in 2 Pardons*, WASH. POST (Feb. 22, 2001) at A1.

[360] *Id.*

[361] Statement by Nancy Luque, Counsel for Hugh Rodham, Reed Smith (Feb. 21, 2001).

Luque's initial statement suggested that Rodham returned all of the fees he was paid for obtaining the Braswell pardon and the Vignali commutation. She soon backtracked, and conceded to the press that he had returned only $300,000 of the fees.[362] The press still reported that Rodham had agreed to refund all $434,000 he was paid by Braswell and Vignali.[363]

However, the Committee's review of Rodham's bank records shows that as of June 2001 Rodham had returned only $280,000 of the $434,000 he was paid for his work on the Vignali and Braswell matters. On February 21, 2001, Rodham wrote checks for $230,000 and $50,000 to the Coale, Cooley, Leitz, McInerny law firm.[364] It appears that the funds were then forwarded by the Coale, Cooley firm to Reed Smith, Nancy Luque's law firm. Then, on February 23, 2001, Reed Smith issued a check for $230,000 to Glenn Braswell[365] and a check for $50,000 to Morvis Corvis Corporation, one of Horacio Vignali's companies.[366] When Luque forwarded the $50,000 to Vignali, she stated that "a check for the balance will be forwarded directly."[367] Communications between Committee staff and Rodham's attorney have confirmed that Rodham has not to date returned any additional amounts and has no plans to return the remaining $154,000 to Vignali.[368]

Therefore, it appears that Rodham misled the public when he suggested he returned all of the fees when he, in fact, ignored the request from former President Clinton and Senator Clinton that he do so. The lack of any further demands from former President Clinton and Senator Clinton that Rodham return the fees suggests that their initial demand was motivated by media pressure, rather than a genuine sentiment that Hugh Rodham should return the funds.

2. The Florida Bar's "Investigation" of Hugh Rodham

Shortly after news of Rodham's role in the Vignali and Braswell grants of clemency came to light, a complaint was filed against Rodham with the Florida Bar Association. The Florida Bar rules,

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[362] David Johnston, *Hollywood Friend Had Clinton's Ear for 2 Late Pardons*, N.Y. TIMES, (Feb. 24, 2001) at A8.

[363] *Id.*

[364] First Union Document Production (Check numbers 1321 and 1322 from Rodham & Fine, P.A. IOTA [sic] to Coale, Cooley Liets, McInerny & Broadus, for $230,000.00 and $50,000, respectively) (Feb. 28, 2001)) (Exhibit 41) (*in globo*). John P. Coale, a name partner in Coale Cooley, is a well-known personal injury lawyer with strong ties to the Clinton Administration.

[365] Reed Smith Document Production (Check from Reed Smith to Glenn Braswell for $230,000 (Feb. 23, 2001)) (Exhibit 42).

[366] Reed Smith Document Production (Check from Reed Smith to Morvis Corvis Corporation for $50,000 (Feb. 23, 2001)) (Exhibit 43).

[367] Letter from Nancy Luque, Partner, Reed Smith, to Carlos Vignali, Morris [sic] Corvis Corp. (Feb. 21, 2001) (Exhibit 44).

[368] In her discussions with Committee staff, Luque indicated that she advised against refunding any of the money and that Rodham did so against her advice. It is also interesting to note that Roger Clinton believes that Hugh Rodham should not have been forced to return the money:

> Anyway, Huey [Rodham] has been sort of hung out to dry, and I want to make that clear. He is a great man. I love him. He didn't do anything wrong. But he was just tired of the crap. And tired of the hounding, and he did what he thought it was going to take to get rid of it. You know what? He is a lawyer, he was entitled to do what he wanted to do.
>
> Larry King Live, CNN, June 21, 2001.

Roger Clinton has an interesting point insofar as Hugh Rodham was asked to return $434,000 he earned lobbying for executive clemency when Roger was not asked to return any of the money he earned in connection with the Gambino matter and Jack Quinn was not asked to return fees he earned in connection with the Marc Rich matter.

like those of most other states, prohibit excessive fees and the receipt of contingent fees in criminal cases. Rule 4–1.5(a)(1) states that "[a]n attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited or clearly excessive fee." [369] Rule 4–1.5(f)(3)(B) states that a "lawyer shall not enter into an agreement for, charge, or collect . . . a contingent fee for representing a defendant in a criminal case." [370]

The facts of the Rodham case not being in dispute, it seems that the one issue examined by the Florida Bar was whether Rodham's work constituted "representing a defendant in a criminal case." Indeed, there is mixed opinion regarding how Rodham's work on the pardons should be characterized. Jack Quinn took the position that his lobbying for Marc Rich's pardon did constitute representation in a criminal case and that is why he met the exemption in Executive Order 12834, which otherwise would have prohibited him from lobbying his former colleagues in the White House Counsel's Office. If Quinn's reasoning were to prevail in the Rodham case, it seems clear that Rodham would have violated the Florida Bar Rules against receiving contingent fees in a criminal case. On the other hand, Federal District Court Judge Denny Chin rejected the claims of Jack Quinn and the other Marc Rich lawyers that their work lobbying for the pardons of Rich and Pincus Green were protected by the attorney-client privilege and attorney work product protection. Judge Chin ruled that their work lobbying for a pardon could not be considered legal work entitled to the attorney-client privilege or work product protection.[371] If Judge Chin's ruling were to be followed by the Florida Bar, it is less likely that Rodham could be sanctioned for violating the Florida Bar rules. However, it is still possible that he could be punished for charging an excessive fee in relation to the amount of work he performed on the pardons.

Rather than conducting a serious inquiry into the facts or the law, it appears that the Florida Bar has declined to look into the Rodham matter at all. On July 16, 2001, the Florida Bar grievance committee voted unanimously to close the Rodham case. In its letter closing the case, the Florida Bar described its investigation and reasons for closing the case. It appears that the investigation consisted solely of reading press accounts of Rodham's involvement in lobbying for pardons and requesting a written response to the allegations from Rodham's counsel.

The Florida Bar considered first whether Rodham's fees were improper and ruled that they were not for two main reasons. First, it determined that the clemency process was not a judicial proceeding. Contingent fees are prohibited in criminal cases, largely because the "right to competent counsel should not be tied to the compensation paid to the attorney." [372] However, the Florida Bar concluded that "clemency is different from other post-conviction avenues of appeal. It cannot be said that, based on existing rules and ethics opinions, accepting a contingency fee for assistance in a clemency proceeding is improper *per se*." [373] Second, it determined

[369] Rule 4–1.5(a)(1), Rules Regulating the Florida Bar.
[370] Rule 4–1.5(f)(3)(B), Rules Regulating the Florida Bar.
[371] *In re Grand Jury Subpoenas* (No. M11–189 (DC)) (S.D.N.Y. Mar. 9, 2001).
[372] Letter from Barry W. Rigby, Chief Branch Disciplinary Counsel, The Florida Bar, to J. Christian Adams, Counsel, Adams Law Firm (July 16, 2001) (Exhibit 45).
[373] *Id.*

that Rodham's fees could not be characterized as "excessive," despite the fact that he was paid $434,000 for minimal work. The Bar Committee concluded that "it would be highly unusual for The Florida Bar to become involved in a determination of reasonableness of attorney's fees in the absence of a complaint of an interested party, one who actually suffered harm directly. We may consider doing so when a compelling public interest arises . . . [We] did not find a compelling public interest in the matters involved."[374]

Second, the Florida Bar considered whether Rodham engaged in dishonest conduct in his efforts to obtain the Vignali and Braswell grants of clemency. The Florida Bar concluded:

> There has been no evidence presented or made available to The Florida Bar: 1) that Mr. Rodham violated rules or procedures relating to the pardons in question; 2) that monies were intended as improper payment to persons involved in the pardon process; or 3) that there was any other deceit or dishonesty on his part.[375]

The Bar then noted that it had attempted to obtain information about Rodham from the U.S. Attorney's Office for the Southern District of New York but was declined.[376] At no time did the Florida Bar approach this Committee seeking information about Rodham, which would have been shared readily with the Bar.

As this report has made clear, Hugh Rodham engaged in dishonest conduct on a number of occasions with respect to his work on the Vignali commutation. Rodham passed on misleading information to the White House, he made misleading arguments to White House staff about Vignali's case for clemency, and he told outright lies to White House staff, for example, that the attorney who prosecuted Vignali supported his commutation. The Florida Bar should review this report and take appropriate action against Rodham.

3. The Message Sent by the Vignali Commutation

The Vignali commutation will have two practical consequences. First, Carlos Vignali has been released from prison approximately nine years ahead of schedule. There is no evidence that Vignali is reformed or that he has in any way changed his life since being convicted. He has never admitted his guilt, he has never cooperated with law enforcement, and he has never admitted that he did anything wrong.

However, the Vignali commutation has a significance beyond the early release from prison of an unrepentant cocaine dealer. With his commutation, President Clinton sent a message that there is a double standard of justice between the rich and the poor. Twenty-eight other people were convicted along with Vignali for participating in the cocaine distribution ring. Carlos Vignali was the only person in that distribution ring to receive executive clemency. Yet, other participants in the conspiracy received stiffer prison sentences, despite the fact that they served more minor roles in the conspiracy than Vignali. For example, Todd Hopson was sentenced

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[374] *Id.*
[375] *Id.*
[376] *Id.*

to over 19 years in prison and is still in prison today. While Hopson was clearly guilty, police have stated that his sentence was excessive.[377] After Vignali received his commutation, Hopson observed, "I didn't pay anybody, I didn't have anybody walk my application up to the White House and put it in front of the President. I didn't have those connections."[378] Even Todd Hopson, a convicted cocaine dealer, can understand the message sent by President Clinton: if you can afford to hire the right person—especially a relative of the President—you can get out of prison, even if you are clearly guilty of a serious crime.

The Vignali commutation also sent a message to the nation's law enforcement officers. Many law enforcement officers risk their lives on a daily basis to stem the flow of illegal drugs into our neighborhoods. Indeed, Carlos Vignali and his 28 co-conspirators were apprehended only after a painstaking investigation that included wiretaps and undercover surveillance. When one of the ringleaders of a cocaine distribution ring receives executive clemency solely because he hired the president's brother-in-law to represent him, it mocks the efforts of law enforcement and indicates a dangerously lax attitude towards fighting the war on drugs. Tony Adams, the Minneapolis narcotics detective who played a key role in apprehending Vignali and who has risked his life in the line of duty,[379] understood the significance of President Clinton's actions. Adams observed that "it's like, basically, you've just been told that this kid, he's untouchable."[380] Adams stated that the Vignali commutation "more or less tells us that America's system has been bought if you have money."[381] The bitterness of Adams, and presumably a number of other law enforcement officers, is clear in Adams' statement that "politicians always get in front of this camera and say "We're trying to take dope off the streets. We're trying to put dope dealers in jail." Well, you just let one out, a big one."[382] Adams suggested that "the politicians in L.A. or Washington, D.C., should finish the nine years that he has left on his time, and I'm standing right by that."[383]

II. THE PARDON OF A. GLENN BRASWELL

Another of the recipients of President Clinton's misplaced mercy on his final days in the White House was Almon Glenn Braswell. Braswell was convicted in 1983 of mail fraud, perjury, and tax evasion in connection with selling herbal remedies purporting to encourage hair growth, remove cellulite, and increase breast size.[384]

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[377] Fox Special Report with Brit Hume (Feb. 27, 2001).

[378] Richard A. Serrano and Stephen Braun, *Working the American System*, L.A. TIMES, Apr. 29, 2001, at L.A. TIMES MAG. 10.

[379] The danger of Adams' work is underscored by the fact that on April 20, 2001, he was shot at by a suspect. Adams was unharmed. David Chanen, *Man Fires at Officer, But Nobody is Hurt*, STAR TRIB., Apr. 20, 2001, at 9B.

[380] Richard A. Serrano and Stephen Braun, *Working the American System*, L.A. TIMES, Apr. 29, 2001, at L.A. TIMES MAG. 10.

[381] Fox Special Report with Brit Hume (Feb. 27, 2001).

[382] ABC World News Now (Feb. 23, 2001). *See also* Duncan DeVille Document Production (Letter from Duncan DeVille, Assistant U.S. Attorney for the Central District of California, Department of Justice, to Alejandro Mayorkas, U.S. Attorney for the Central District of California, Department of Justice (Mar. 2, 2001)) (Exhibit 46) (citing Mayorkas' assistance in the Vignali matter as the basis for resignation).

[383] Fox Special Report with Brit Hume (Feb. 23, 2001).

[384] Douglas Pasternak, *Another Dubious Pardon*, U.S. NEWS & WORLD REP., Feb. 12, 2001, at 26.

More alarmingly, Braswell was under investigation by the Food and Drug Administration, the Federal Trade Commission, the Internal Revenue Service, and several state attorneys general when his pardon was granted.[385] In addition, as the President was granting Braswell a pardon, federal investigators in Los Angeles were examining a massive tax evasion and money-laundering scheme allegedly conducted by Braswell.[386] How such an unmeritorious application received President Clinton's attention may be explained by a $230,000 payment from Braswell to Hugh Rodham, the President's brother-in-law. [387]

A. Braswell's History of Misconduct

In the decades prior to Hugh Rodham's involvement, Braswell created a dietary supplement empire by intentionally misleading consumers with false claims of health benefits.[388] These fabricated claims led to Braswell's conviction in 1983 on perjury, tax evasion, and mail fraud charges.[389] According to his pardon petition, Braswell was convicted of tax evasion for creating a system in which he would intentionally overpay for corporate services and, in return, receive cash payments that were not reported as income to the IRS.[390] With respect to the mail fraud conviction, Braswell devised a scheme to defraud consumers by placing false and misleading advertisements in magazines throughout the United States.[391] These advertisements depicted phony "before and after" photographs purportedly revealing how Braswell's products promoted hair growth and breast enlargement.[392] Mr. Braswell was sentenced to three years' imprisonment and five years' probation for these crimes,[393] but he received parole after serving only seven months in prison.[394]

Braswell's conviction was just the beginning of his legal troubles. Braswell pled no contest to grand theft after being arrested for burglary at the home of a former employee.[395] He was sentenced to two years' probation to run concurrently with his federal sen-

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[385] *Id.*

[386] Peter Slevin, *Another Pardon Stirs Controversy; Herbal Marketer Faces U.S. Tax Evasion Probe*, WASH. POST, Feb. 6, 2001, at A3.

[387] *See* Letter from Nancy Luque, Partner, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 28, 2001) (within Appendix I).

[388] Kurt Eichenwald and Michael Moss, *Pardon for Subject of Inquiry Worries Prosecutors*, N.Y. TIMES, Feb. 6, 2001, at A1.

[389] NARA Document Production (Almon Glenn Braswell's Petition for Pardon (Jan. 12, 2001)) (Exhibit 47).

[390] *Id.*

[391] *Id.* The House Select Committee on Aging held a hearing in 1984 examining the fraudulent claims of dietary supplement marketers such as Braswell. "In Quackery: A $10 Billion Scandal," *Hearings Before the House Select Committee on Aging, Subcommittee on Health and Long-term Care*, 98th Cong**.** (May 31, 1984). Regarding Braswell's companies in particular, a Postal Service official testified, "one hundred and thirty-eight false representation complaints were filed against 50 different medical-cosmetic products marketed by Braswell, Inc." *Id.* at 137. The cases were concluded through 32 false representation orders and 15 consent agreements.

[392] *Id.* at 138.

[393] Richard A. Serrano, *Man's Pardon for "83 Crime Can't Aid Him in L.A. Probe*, L.A. TIMES, Feb. 7, 2001, at A4.

[394] Douglas Pasternak, *Another Dubious Pardon*, U.S. NEWS & WORLD REP., Feb. 12, 2001, at 26.

[395] "Swindlers, Hucksters and Snake Oil Salesman: Hype and Hope Marketing Anti-Aging Products to Seniors," *Hearing Before the Senate Special Committee on Aging*, 107th Cong. 27 (prepared statement of E. Vernon F. Glenn, Attorney, Law Offices of E. Vernon F. Glenn). Glenn represented several clients in a defamation lawsuit against Braswell.

tence.[396] Additionally, the Federal Trade Commission brought charges against Braswell in 1983. The FTC contended that his companies lacked adequate scientific evidence supporting the claims of their hair-loss products and that the companies declined to pay refunds promised to customers.[397] Braswell's companies settled FTC charges by paying $610,000 in civil penalties, and the FTC permanently barred them from making performance claims for any product without reliable scientific evidence.[398]

For over a decade, the herbal remedy dealer managed to evade the attention of federal regulators. In 1995, the Food and Drug Administration issued an import alert on products manufactured by Gero Vita International, Braswell's principal mail-order marketer of natural medicines.[399] The FDA determined that Gero Vita was promoting certain products as "drugs" that could cure various ailments without first receiving FDA approval.[400] The alert enabled FDA to seize Gero Vita products imported into the United States. It was in effect at the time President Clinton pardoned Braswell on January 20, 2001, and it was still in effect as of January 2002.[401] Also in 1995, the National Advertising Division of the Council of Better Business Bureaus concluded that Gero Vita could not substantiate claims for one of its products claiming to be an "Anti-Aging Pill."[402] The company advertisement declared that the pill "improves memory . . . Sex Drive! And reduces chance of Heart Attack by 83%!"[403] The Better Business Bureau warned consumers that these proclamations were "exaggerated and overstated" and "misleading."[404]

Three sports celebrities were also victims of Glenn Braswell's fraudulent practices. Race-car driver Richard Petty, Hall of Fame quarterback Len Dawson, and baseball Hall of Famer Stan Musial filed suit against Braswell in 1997 for falsely portraying these celebrities as endorsing a Braswell product that purportedly treats prostate cancer.[405] In peddling Prostata, Braswell inappropriately and inaccurately warned that the sports figures "waited too long and are suffering" from prostate problems.[406] He then mailed brochures featuring the celebrities' photographs with their bogus endorsement to over 17 million addresses.[407] As a result, subsequent sales of Prostata associated with those brochures totaled over $5 million.[408] The lawsuit accused Braswell of defamation, invasion of

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[396] *Id.*

[397] Federal Trade Commission Press Release, *Braswell Prohibited Permanently from Advertising Baldness "Cures" Without FDA Approval of Product, Under Federal Trade Commission Consent Judgment*, Sept. 16, 1983.

[398] *Id.*

[399] Michael Isikoff, *The Bush Clan's Donor Problem*, NEWSWEEK, Sept. 29, 2000, at 2000 WL 33208288.

[400] *Id.*

[401] *See* Food and Drug Administration Import Alert #66–41, *Unapproved New Drugs Promoted in the U.S.*, Sept. 28, 2000.

[402] Michael Isikoff, *The Bush Clan's Donor Problem*, NEWSWEEK, Sept. 29, 2000, at 2000 WL 33208288.

[403] *Id.* (quoting Gero Vita Advertisement)

[404] *Id.*

[405] Joan McKinney, *New "Snake-Oil" Industry Roasted*, BATON ROUGE ADVOC., Sept. 11, 2001, at 1A.

[406] Lucy Morgan, *Bush Brothers Pop Up in Potion Peddler's Magazine*, ST. PETERSBURG TIMES, Sept. 29, 2000, at A1.

[407] "Swindlers, Hucksters and Snake Oil Salesman: Hype and Hope Marketing Anti-Aging Products to Seniors," *Hearing Before the Senate Special Committee on Aging*, 107th Cong. 26 (prepared statement of E. Vernon F. Glenn, Attorney, Law Offices of E. Vernon F. Glenn).

[408] *Id.*

privacy, unfair trade practices, and intentionally inflicting emotional distress.[409] In his two-hour deposition, Braswell invoked his Fifth Amendment privilege against self-incrimination 196 times.[410] According to the sports stars' attorney, the lawsuit was eventually settled out of court for "significant money."[411]

Undeterred by the settlement, the FDA's import alert, and the Better Business Bureau's consumer warning, Gero Vita continued to publish deceiving advertisements. In 1998, the editors of Consumer Reports wrote, "We see a lot of misleading marketing, but what spews out of Gero Vita Industries rivals the worst."[412] Continuing its censure, Consumer Reports described Gero Vita's unsolicited booklet mailings as "masquerading as science. The booklets cite actual studies, but twist the findings to support the company's own unsubstantiated claims."[413]

Despite drawing the attention of law enforcement agencies, various federal regulators, consumer advocate groups, and plaintiffs' attorneys, Braswell has continued to use misleading advertising to promote his products. Since the Prostata lawsuit, Braswell has been sued twice more for misrepresenting the results of medical research.[414] Arthritis specialist Dr. Joel Kremer filed suit against two Braswell companies for creating the appearance in an advertisement that Dr. Kremer's research supported the effectiveness of a Braswell arthritis product.[415] According to the lawsuit, the advertisement also falsely portrayed Dr. Kremer as endorsing an anti-arthritis elixir,[416] an allegation similar to the one Braswell settled in the Prostata lawsuit. In a similar lawsuit, Braswell allegedly misused another doctor's research once again for an anti-arthritis product.[417] This lawsuit asserts that Gero Vita distorted Dr. John Prudden's research to support the claim that the Gero Vita product supposedly rebuilt joints and stopped arthritis.[418] These suits were still pending as of September 2001.[419]

Braswell was under criminal investigation by federal prosecutors in Los Angeles for tax evasion when President Clinton pardoned him in January 2001.[420] The federal inquiry focused on whether Braswell transferred millions of dollars offshore through a shell company to evade IRS detection.[421] Federal investigators described Braswell's actions as "a massive tax evasion and money-laundering

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[409] Lucy Morgan, *Bush Brothers Pop Up in Potion Peddler's Magazine*, ST. PETERSBURG TIMES, Sept. 29, 2000, at A1.

[410] Isabel Vincent, *The Canadian Connection to Clinton Pardon*, NAT'L POST, Mar. 3, 2001, at B1.

[411] *Id.*

[412] Consumer Reports, *quoted in* Peter Slevin, *Another Pardon Stirs Controversy; Herbal Marketer Faces U.S. Tax Evasion Probe*, WASH. POST, Feb. 6, 2001, at A3.

[413] *Id.*

[414] "Swindlers, Hucksters and Snake Oil Salesman: Hype and Hope Marketing Anti-Aging Products to Seniors," *Hearing Before the Senate Special Committee on Aging*, 107th Cong. 28–29 (prepared statement of E. Vernon F. Glenn, Attorney, Law Offices of E. Vernon F. Glenn).

[415] Kim Martineau, *Doctor Sues Firms Over Claims in Ad*, TIMES UNION (Albany, NY) Sept. 2, 2000, at B4.

[416] *Id.*

[417] "Swindlers, Hucksters and Snake Oil Salesman: Hype and Hope Marketing Anti-Aging Products to Seniors," *Hearing Before the Senate Special Committee on Aging*, 107th Cong. 28–29 (prepared statement of E. Vernon F. Glenn, Attorney, Law Offices of E. Vernon F. Glenn).

[418] *Id.*

[419] *Id.* at 29.

[420] Peter Slevin, *Another Pardon Stirs Controversy; Herbal Marketer Faces U.S. Tax Evasion Probe*, WASH. POST, Feb. 6, 2001, at A3.

[421] *Id.*

scheme."[422] Court documents also allege that Braswell and his employees attempted to conceal documents from the government.[423] These allegations are based on documents and company computers seized from Braswell's principal holding company, G.B. Data Systems, after IRS agents raided the office in 1999.[424] Should any charges be brought based on these allegations, federal prosecutors anticipate that Braswell will argue that his pardon included the pending tax evasion investigation.[425] Moreover, if Braswell were convicted on tax evasion charges, the pardon could lessen his sentence by neutralizing past felonies.[426] In either scenario, the legal consequences of the pardon could potentially reward Braswell with unjustified leniency.

B. Consideration of the Braswell Pardon by the Clinton White House

The active criminal investigation into Braswell might have disqualified him if normal pardon procedures were followed.[427] Yet, Braswell's petition bypassed the traditional route through the Justice Department and went directly to the White House.[428] Legal experts agree that had the FBI conducted the background investigation instead of the White House, Braswell's application would have been rejected quickly.[429] A former pardon attorney at the Justice Department during the Carter Administration said, "If it had gone through normal channels, it never would have gotten through. Nobody ever gets a pardon when they are under active investigation for other offenses—ever."[430] Margaret Colgate Love, the Justice Department's pardon attorney from 1990 to 1997,[431] concurred that evidence of an ongoing investigation should stop a president from issuing a pardon because the "law-abidingness" of the individual is a critical threshold in determining whether a petitioner is deserving.[432] Love described the final Clinton pardons as "an accident waiting to happen."[433]

How such an undeserving petitioner received the President's ultimate grant of forgiveness can be explained by Braswell's powerful and high-priced connections. Braswell was represented in his par-

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[422] *Id.*

[423] Michael Isikoff, *The Bush Clan's Donor Problem*, NEWSWEEK, Sept. 29, 2000, at 2000 WL 33208288.

[424] *Id.*

[425] Michael Moss, *Officials Say Investigation Will Go On Despite Pardon*, N.Y. TIMES, Feb. 8, 2001, at A24. A former White House spokesman said that the President did not intend for the pardon to cover anything other than the felonies Braswell committed in 1983. Richard A. Serrano, *Man's Pardon for "83 Crime Can't Aid Him in L.A. Probe*, L.A. TIMES, Feb. 7, 2001, at A4. The Justice Department also concluded that the U.S. Attorney's Office in Los Angeles could continue its investigation of Braswell's potential felonies involving his offshore corporations and accounts.

[426] Michael Moss, *Officials Say Investigation Will Go on Despite Pardon*, N.Y. TIMES, Feb. 8, 2001, at A24.

[427] Kurt Eichenwald and Michael Moss, *Pardon for Subject of Inquiry Worries Prosecutors*, N.Y. TIMES, Feb. 6, 2001, at A1.

[428] *Id.*

[429] *Id.*

[430] Tim Nickens, *Pardon of Man Under Investigation Questioned*, ST. PETERSBURG TIMES, Feb. 8, 2001, at 6B.

[431] Leon Bruneau, *Clinton Aides Testify Before Congress on Pardon Controversy*, AGENCE FRANCE-PRESSE, Mar. 1, 2001, at 2001 WL 2352895.

[432] Peter Slevin, *Clinton Termed Unaware of Braswell Probe; Spokesman Says Pardon Covered Only '83 Case, Not Possible New Charges*, WASH. POST, Feb. 7, 2001, at A20.

[433] Leon Bruneau, *Clinton Aides Testify Before Congress on Pardon Controversy*, AGENCE FRANCE-PRESSE, Mar. 1, 2001, at 2001 WL 2352895.

don bid by Kendall Coffey, a former U.S. Attorney appointed by President Clinton[434] and an attorney for former Vice President Al Gore during the Florida vote recount.[435] However, it is unclear whether Coffey called on his own influence with the Clinton Administration to obtain the Braswell pardon. Rather, it appears that Coffey's main contribution to the pardon effort was to hire Hugh Rodham.

On January 12, 2001, Coffey sent a note to Rodham requesting his assistance. The note suggested that Rodham could earn a very large sum of money for his work.[436] In his note regarding Braswell, Coffey wrote:

> The client proposes $20,000 for a best efforts submission and an $80,000 success payment. Both numbers are negotiable, especially the latter. The initial payment can be wired Tuesday a.m. if the representation is accepted.[437]

Rodham accepted the representation but not before negotiating a fee of $230,000 for his work if successful.[438] On January 17, 2001, two days before the pardon was issued, Coffey sent Rodham a fax at the White House.[439] The fax included a three-page letter written by Coffey to the President expounding on the merits of the Braswell case.[440] With Braswell's crime-ridden background in mind, in addition to the current investigation for tax fraud, excerpts from Coffey's letter would be laughable if not for the gravity of the situation. In the letter, Coffey describes Braswell as a "visionary" with an "exemplary record of business accomplishments" who is "truly deserving of the extraordinary measure of mercy embodied in a Presidential pardon."[441] Coffey also opined that "[g]ranting a pardon to bring justice and healing to a man's life would further the extraordinary legacies that have defined your Presidency."[442]

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[434] Coffey's tenure as U.S. Attorney ended under an ethical cloud. After losing a major drug trafficking trial in February 1996, Coffey visited the Lipstik Adult Entertainment Club, charged a $900 magnum of Dom Perignon champagne to his American Express card, and retired to the club's private champagne room with one of the dancers. David Adams, *Top Lawman Quits After Topless Bar Tale*, ST. PETERSBURG TIMES, May 18, 1996, at 1A. Reports indicate that, after the dancer rebuffed Coffey's advances towards her, Coffey grabbed the dancer, pulled her towards him, and bit her left upper arm. The bite broke the dancer's skin and drew blood, according to the dancer's husband. After meeting with then-Attorney General Janet Reno about the incident, Coffey resigned as U.S. Attorney. *Federal Attorney Resigns*, TAMPA TRIBUNE, May 18, 1996, at 1.

[435] Tim Nickens, *Pardon of Man Under Investigation Questioned*, ST. PETERSBURG TIMES, Feb. 8, 2001, at 6B.

[436] Kendall Coffey Document Production 0003 (Memorandum from Kendall Coffey, Attorney, to Hugh Rodham, Attorney (Jan. 12, 2001)) (Exhibit 48). Along with this note, Coffey attached a copy of Braswell's pardon petition.

[437] *Id.*

[438] *See* Letter from Nancy Luque, Partner, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 28, 2001) (within Appendix I). News reports indicated that Rodham received $200,000 for his work on Braswell's pardon, but, according to Rodham's attorney, Braswell made one payment of $30,000 and then transferred $200,000 by wire to Rodham's law firm. Based on this information and Coffey's note to Rodham, the $30,000 payment likely was for a "best efforts submission" by Rodham that he would receive regardless of outcome. The $200,000 wire transfer likely was received as a "success payment."

[439] Kendall Coffey Document Production 0004–07 (Fax from Kendall Coffey, Attorney, Kendall Coffey, P.A., to Hugh Rodham (Jan. 17, 2001)) (Exhibit 49).

[440] *See id.*

[441] *Id.*

[442] *Id.*

At this point, Coffey's work pushing the Braswell pardon was finished,[443] and Braswell's fate was placed in Rodham's hands. In the final days of the Clinton Administration, Rodham contacted Meredith Cabe of the White House Counsel's Office at least twice.[444] He forwarded Coffey's letter of support for Braswell to Cabe, and he made a follow-up inquiry.[445] According to Rodham's attorney, these two actions were the extent of Rodham's role in the Braswell pardon, a role for which he received $230,000.[446] Despite the huge reward for success, his close relationship with the President, and his living in the White House, Rodham claims he never discussed either Braswell or Vignali with President Clinton or Hillary Clinton.[447] However, the small circle of aides advising the former President admit that Clinton and Rodham may have had private discussions to which staffers were not privy.[448]

Among the staffers assisting the President with the pardon petitions were members of the White House Counsel's Office. Meredith Cabe recalls discussing the Braswell pardon with Rodham.[449] In fact, another associate counsel at the White House, Eric Angel, was also aware that Rodham was involved with the Braswell case.[450] When asked how he knew of Rodham's advocacy, Angel responded, "I think his name was on an envelope or Meredith mentioned it."[451] Based on the pardon petition and the White House's cursory investigation, Angel did not oppose the Braswell pardon and remembers no other staff member opposing the Rodham-backed pardon either.[452]

One of the President's closest advisors, White House Counsel Beth Nolan, was also aware that Rodham was advocating Braswell's petition.[453] Ms. Nolan knew that Mr. Rodham circumvented the Justice Department and filed the Braswell petition directly with the White House.[454] In fact, Nolan brought the Braswell pardon to Cabe's attention.[455] Ms. Nolan personally handed the Braswell file to Cabe and Angel.[456] Nolan then requested that Cabe inspect the petition because Nolan believed it was the type of case in which the President was interested.[457] Finally, both Cabe and Nolan recall discussing the Braswell petition in a meet-

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[443] Kendall Coffey Document Production 0001–02 (Record of Professional Services Rendered Regarding Braswell Clemency Application (Feb. 4, 2001)) (Exhibit 50).

[444] Letter from Nancy Luque, Partner, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 28, 2001) (within Appendix I).

[445] *Id.*

[446] *Id.*

[447] *Id.*

[448] Christopher Marquis and Michael Moss, *A Clinton In-law Received $400,000 in 2 Pardon Cases*, N.Y. TIMES, Feb. 22, 2001, at A1.

[449] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[450] Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

[451] *Id.*

[452] *Id.*

[453] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 413 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

[454] *Id.* at 382.

[455] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[456] Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).

[457] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

ing with the President.[458] Despite Rodham's oddly intense interest in an obscure herbal remedy dealer from South Florida, Nolan claims that she was unaware Rodham was receiving a fee for his advocacy.[459] Cabe explained that the President had a "general articulation" of types of cases he wanted to consider.[460] She recalled that President Clinton believed that felons convicted a long time ago, but who now abided by the law, deserved to have their civil rights restored.[461] Based on general agreement among White House staff, Braswell fell into this category and deserved clemency.[462]

In a carefully worded statement, President Clinton issued a similar claim.[463] The former President said he had no knowledge that Rodham received a contingency fee for his work on the Braswell application and insisted that Rodham return any monies received.[464] The President's careful use of the phrase "contingency fee" leaves open the possibility that he was aware Braswell was paying Rodham, but not the details of their arrangement. Rodham's attorney Nancy Luque mailed a $230,000 check to Braswell on February 23, 2001,[465] after Rodham's conduct was widely reported and criticized in the press.[466]

In the face of widespread criticism from Republicans and Democrats alike, Luque somehow maintained that "Hugh Rodham has done absolutely nothing wrong."[467] Most disagreed with Luque's viewpoint. President Clinton declared that he and Hillary were "deeply disturbed" by news reports of Rodham's actions.[468] In a separate statement, Hillary Clinton stated her belief that "the payments should be returned immediately."[469] Other critics more forcefully condemned Rodham. Terry McAuliffe, Chairman of the Democratic National Committee, declared, "What he did was absolutely wrong."[470] The DNC Chairman called on Rodham to "fully account for his actions."[471]

As for Braswell, he has been unable to steer clear of allegations of misconduct. In addition to the federal tax evasion inquiry ongoing in Los Angeles, Braswell was subpoenaed to testify before a Senate Committee investigating health scams in September

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[458] *Id*. "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 413 (Mar. 1, 2001) (testimony of Beth Nolan, former Counsel to the President, the White House).

[459] *Id.*

[460] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[461] *Id.*

[462] *Id.*

[463] Jerry Seper, *Hillary's Brother Returns Cash for Pardon Work*, WASH. TIMES, Feb. 22, 2001, at A1.

[464] *Id.*

[465] Letter from Nancy Luque, Partner, Reed Smith, to Glenn Braswell (Feb. 23, 2001) (Exhibit 42).

[466] Reports detailing Rodham's receipt of over $200,000 from Braswell appeared on the front page of The NEW YORK TIMES, WASHINGTON POST, WASHINGTON TIMES, WALL STREET JOURNAL, LOS ANGELES TIMES, and USA TODAY.

[467] Christopher Marquis and Michael Moss, *A Clinton In-law Received $400,000 in 2 Pardon Cases*, N.Y. TIMES, Feb. 22, 2001, at A1.

[468] Jerry Seper, *Hillary's Brother Returns Cash for Pardon Work*, WASH. TIMES, Feb. 22, 2001, at A1.

[469] *Id.*

[470] Christopher Marquis and Michael Moss, *A Clinton In-law Received $400,000 in 2 Pardon Cases*, N.Y. TIMES, Feb. 22, 2001, at A1.

[471] *Id.*

2001.[472] At the hearing, the former chief executive officer of a Braswell company testified that its products are "laden with lies and deception"[473] and that Braswell continues to "prey on the elderly and infirmed."[474] Due in part to advertisements containing "outright false statements," Braswell's companies generate annual revenues of approximately $200 million.[475] The companies are organized to create the appearance of foreign ownership in ghost locations so any individual or agency seeking to locate the company will be delayed.[476] In response to these weighty allegations, Braswell invoked his Fifth Amendment right against self-incrimination and refused to answer questions posed by the Committee.[477] Braswell similarly refused a request for an interview by Committee staff.[478]

III. HUGH RODHAM'S EFFORTS TO OBTAIN CLEMENCY FOR THE LUMS

A. Background on Gene and Nora Lum

Gene and Nora Lum were prominent Democratic contributors and fundraisers who gave more than $90,000 to the Democratic Party and raised at least $250,000 more.[479] The Lums were especially close to former DNC Chair and Commerce Secretary Ron Brown. In 1992, at the request of Ron Brown, the Lums established the Asian Pacific Advisory Council to organize the Asian-Pacific American community and raise funds for the Democratic National Committee. In 1993, the Lums purchased an oil and gas company in Oklahoma and named it Dynamic Energy Resources. They hired Secretary Brown's son, Michael, to work at Dynamic Energy Resources. Although he did little work for the Lums, he was given $500,000 in company stock and a country club membership worth $60,000.[480]

Many of the Lums' political contributions were illegal, and in 1997 the Lums pleaded guilty to making $50,000 in illegal conduit contributions to the DNC and the campaigns of Senator Edward Kennedy and Stuart Price. Their daughter, Trisha Lum, and Michael Brown also pled guilty to misdemeanor charges of making conduit contributions. As part of their plea agreement, Gene and Nora Lum were sentenced to 5 months in home detention and 5 months in a halfway house and were ordered to pay a $30,000 fine.[481] In August 1998, Gene Lum also pleaded guilty to tax fraud

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[472] William M. Welch, *Senate Probes "Anti-Aging" Claims*, USA TODAY, Sept. 10, 2001, at A7.

[473] "Swindlers, Hucksters and Snake Oil Salesman: Hype and Hope Marketing Anti-Aging Products to Seniors," *Hearing Before the Senate Special Committee on Aging*, 107th Cong. 8 (testimony of Mike O'Neal, former Chief Executive Officer, GB Data Systems)

[474] *Id.* at 11.

[475] *See id*. at 8–9.

[476] *Id*. at 9.

[477] Dennis Camire, *President of Dietary Supplement Firm Takes Fifth in Senate Questioning*, GANNETT NEWS SERVICE, Sept. 11, 2001, at 2001 WL 5112568.

[478] Letter from James C. Wilson, Chief Counsel, Comm. on Govt. Reform, to Henry F. Schuelke, III, Partner, Janis, Schuelke and Wechsler (February 26, 2002) (within Appendix I).

[479] Jerry Seper, *Brown Son Gets Probation and Fine; Illegal Donations Made in '94 Races*, WASH. TIMES, Nov. 22, 1997, at A2; John Solomon, *Couple to Plead Guilty to Illegal $50,000 Donation*, ASSOCIATED PRESS POLITICAL SERVICE, May 22, 1997, at 1997 WL 2527905.

[480] Jerry Seper, *Couple Jailed for Gifts to Democrats*, WASH. TIMES, Sept. 10, 1997, at A10.

[481] Press Release 01–182, *Thai Businesswomen Sentenced On Campaign Financing Charges*, Department of Justice, Apr. 20, 2001. In particular, the Lums pleaded to using Dynamic Resources to funnel $50,000 in illegal contributions to the 1994 re-election campaign of Senator Edward Kennedy and to Stuart Price's unsuccessful congressional campaign in Oklahoma.

for filing tax returns claiming more than $7.1 million in false deductions.[482] In June 1999, Gene Lum was sentenced to two years in prison.[483]

B. Hugh Rodham Approaches the White House About the Possibility of a Pardon for the Lums

The Committee has attempted to interview Gene Lum, Nora Lum, and their daughter Nicole Lum. All three have refused to cooperate with the Committee's investigation. Hugh Rodham also refused to cooperate with the Committee's request for an interview. Therefore, it is difficult to obtain a full understanding of the Lums' efforts to obtain executive clemency. However, sufficient evidence exists to conclude that the Lums did attempt to obtain executive clemency and that Hugh Rodham lobbied the White House as part of that effort. It is not clear why Rodham lobbied on behalf of the Lums or why their request was rejected.

It appears that the Lums had a relationship with Hugh Rodham predating their efforts to obtain executive clemency. The Lums' daughter Nicole described Hugh Rodham was a "business associate and a friend."[484] This relationship is supported by the fact that, on January 26, 2001, Hugh Rodham paid Nicole Lum $20,420.[485] However, Nicole Lum refused to elaborate on the nature of the relationship between Hugh Rodham and her family or the purpose of the payment made by Rodham.

In late 2000, the Lums apparently began their efforts to obtain executive clemency. In December 2000, Nora Lum called Joel Wohlgemuth, the attorney who represented her husband in his tax case, and asked him to compile a variety of documents related to their criminal cases and send them to Hugh Rodham at the White House.[486] Wohlgemuth then compiled a packet of documents relating to both the tax case against Gene Lum and the campaign fundraising case against Gene and Nora Lum.[487] Wohlgemuth sent the documents to Rodham at the White House in late December 2000.[488] In early January 2001, Rodham called Wohlgemuth and

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James Rowley, *The Justice Department Opposes Giving Convicted . . .*, ASSOCIATED PRESS POLITICAL SERVICE, Oct. 15, 1997, at 1997 WL 2555487; Federal Document Clearing House, Department of Justice, "New Jersey Attorney Sentenced in Campaign Finance Case," Oct. 12, 2000 (summarizing Campaign Task Force prosecutions). The Lums admitted making the donations through "straw donors," including their daughter, Trisha, and Michael Brown. James Rowley, "The Justice Department Opposes Giving Convicted . . .," ASSOCIATED PRESS POLITICAL SERVICE, Oct. 15, 1997, at 1997 WL 2555487. The Lums also admitted to having given Brown thousands of dollars in shareholder and consulting fees, which were given to friends to forward to Kennedy's re-election campaign. *Id.*

[482] *Id.*

[483] Press Release 01–182, *Thai Businesswomen Sentenced On Campaign Financing Charges*," Department of Justice, Apr. 20, 2001.

[484] Notes of Conversation Between Pablo E. Carrillo, Counsel, Comm. on Govt. Reform, and Nicole Lum (Aug. 28, 2001).

[485] *See* First Union Document Production (Check number 1314 from Rodham & Fine, P.A. IOTA Account to "Ms. Nikki Lum" for $20,420 (Jan. 26, 2001)) (Exhibit 51).

[486] Telephone Interview with Joel Wohlgemuth, Partner, Norman, Wohlgemuth, Chandler & Dowell (Jan. 17, 2002).

[487] *Id.*

[488] *Id.* The Federal Express package addressed to Hugh Rodham at the White House that contained the documents was reportedly dated December 28, 2000, at 11:11 a.m. The Lawyer's Column, *Lobbyist? Who's a Lobbyist? When It Comes to Clemency, They Are Most Likely Advocates*, WASH. POST, Mar. 5, 2001, at E8. Because Rodham needed the documents immediately at that point, Wohlgemuth sent the documents directly to him through the Usher's Office so that it would not be subject to, and therefore delayed by, onerous security measures that might have

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said that the Justice Department did not have the documents Wohlgemuth had sent to the White House and asked him to resend them directly to Meredith Cabe, the associate White House Counsel responsible for vetting clemency applications, and one other person whose name Wohlgemuth could not recall.[489] Wohlgemuth also asked the Lums' criminal attorneys in their campaign finance-related case to forward the Lums' presentence report directly to Cabe.[490] On January 18, 2001, Cabe received the Lums' presentence report from Caplin & Drysdale.[491]

In January 2001, Hugh Rodham telephoned Meredith Cabe and spoke to her about the prospects of obtaining pardons for Gene and Nora Lum.[492] Cabe found the case Rodham presented in support of the Lums unimpressive, so she "just heard him out."[493] Cabe relayed the substance of her discussion with Rodham about the Lums to Beth Nolan and Bruce Lindsey. Cabe also recalls that later, shortly before the end of the Clinton Administration, she again raised the issue of the Lum pardons with Nolan and Lindsey, and they made it clear to Cabe that the Lums were not going to receive pardons. While Cabe did not know why the Lum pardons were not seriously considered, one anonymous White House source told the press that "senior White House aides had spread the word that clemencies would not be available for those who had been convicted in the past of campaign finance irregularities involving the Democratic Party."[494]

Hugh Rodham has refused to participate in an interview with Committee staff regarding his pardon efforts. However, Rodham's attorney has publicly stated that Rodham "did not represent the Lums. He was asked to represent them. He declined."[495] Luque also publicly noted that Rodham "did not represent [the Lums] in any way, shape or form in connection with any pardon request" and that Rodham "did not advocate on [the Lums'] behalf." Luque's statement is in direct conflict with Meredith Cabe's clear recollection that Hugh Rodham called her about the Lum pardons and lob-

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had the package rerouted through an offsite location for screening. Telephone Interview with Joel Wohlgemuth, Partner, Norman, Wohlgemuth, Chandler & Dowell (Jan. 17, 2002).

[489] *Id.*

[490] Telephone Interview with Cono Namorato and Scott Michel, Partners, Caplin & Drysdale (Jan. 17, 2002). This was the extent of Namorato and Michel's involvement in the Lums' clemency matter. *Id.* At no time did they speak to Hugh Rodham about that, or any other, matter. *Id.*

[491] *Id.*; NARA Document Production (Cover Letter and Presentence Investigation Report from Scott Michel, Partner, Caplin & Drysdale, to Meredith Cabe, former Associate Counsel to the President, the White House (July 16, 1997)) (Exhibit 52).

[492] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001); James V. Grimaldi & Lois Romano, *Two Others Rodham Helped Didn't Win Pardons; Clinton Relative Called White House on Behalf of Former Fundraisers*, WASH. POST, Feb. 26, 2001, at A1. According to one unnamed source, during that conversation, "[Rodham] was expressing some interest in the prospects of the Lums [sic] getting a pardon. He wanted to know where it stood, what the likelihood of a pardon might be." Stephen Braun and Richard Serrano, *More Clemency Lobbying by Rodham Alleged; Commutations; Former President Clinton's Brother-In-Law Called a White House Lawyer About a Pardon For a Couple Convicted of Illegal Campaign Contributions*, L.A. TIMES, Feb. 26, 2001, at A1.

[493] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[494] Stephen Braun and Richard Serrano, *More Clemency Lobbying by Rodham Alleged; Commutations; Former President Clinton's Brother-In-Law Called a White House Lawyer About a Pardon For a Couple Convicted of Illegal Campaign Contributions*, L.A. TIMES, Feb. 26, 2001, at A1.

[495] Stephen Braun and Richard Serrano, *More Clemency Lobbying by Rodham Alleged; Commutations; Former President Clinton's Brother-In-Law Called a White House Lawyer About a Pardon For a Couple Convicted of Illegal Campaign Contributions*, L.A. TIMES, Feb. 26, 2001, at A1.

bied her on behalf of the Lums. Ultimately, Luque modified her earlier public statement when she noted that Rodham in fact played "a negligible role" in pursuing executive clemency for the Lums.[496]

It remains unclear what, if any, amount of money was paid by Rodham to the Lums. Also unclear is whether there was any arrangement for a success fee in the event that Rodham was successful. The refusal of Rodham and the Lums to cooperate with the Committee only heightens the suspicion that some sort of financial arrangement, similar to Rodham's payment arrangement with Horacio Vignali and Glenn Braswell, existed in this case.

IV. FAILURE OF KEY PARTIES TO COOPERATE IN THE HUGH RODHAM INVESTIGATION

A. Hugh Rodham

Hugh Rodham was a central figure in both the Vignali and Braswell matters. However, he extended only partial cooperation to the Committee. On February 21, 2001, Chairman Burton sent Hugh Rodham a letter posing a number of questions regarding his work lobbying for pardons and commutations for various individuals.[497] This letter also requested Rodham to produce records to the Committee regarding his lobbying efforts. On February 28, 2001, Nancy Luque, counsel for Rodham, provided brief answers on behalf of Rodham.[498] On March 7, 2001, Luque provided to the Committee records regarding Rodham's efforts to obtain a pardon for Glenn Braswell.[499] However, Luque did not provide any records regarding Rodham's efforts to obtain a commutation for Vignali, claiming they were all protected by the attorney-client privilege. Shortly thereafter, Chairman Burton requested that Rodham participate in an interview with Committee staff.[500] Rodham refused to participate in an interview but continued to offer to respond to written questions. Therefore, the Committee did send Rodham two letters asking questions regarding his role in the Vignali matter.[501] Rodham did provide extremely brief responses to these questions. However, he refused to provide to the Committee any documents relating to his work on the Vignali matter. Rodham's refusal to provide records relating to the Vignali matter was not justified by the attorney-client privilege, and it appears that Rodham's invocation of the privilege was overbroad and made to hinder the Committee's investigation.

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[496] David Johnston and Don Van Natta, Jr., *White House Logs Said To Show Pre-pardon Visits*, N.Y. TIMES, Feb. 27, 2001, at A20.

[497] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Hugh Rodham (Feb. 21, 2001) (within Appendix I).

[498] Letter from Nancy Luque, Partner, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 28, 2001) (within Appendix I).

[499] Letter from Nancy Luque, Partner, Reed Smith, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Mar. 7, 2001) (within Appendix I).

[500] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Nancy Luque, Partner, Reed Smith (Mar. 13, 2001) (within Appendix I).

[501] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Hugh Rodham c/o Nancy Luque, Partner, Reed Smith (July 30, 2001) (within Appendix I); Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Hugh Rodham c/o Nancy Luque, Partner, Reed Smith (Sept. 21, 2001) (within Appendix I).

B. Horacio and Carlos Vignali

On March 9, 2001, Chairman Burton sent a letter to Edward Rucker, counsel for Horacio and Carlos Vignali, posing a number of questions regarding the effort to win a commutation for Carlos Vignali.[502] On March 15, 2001, Rucker responded, stating that, in light of the criminal investigation into the Vignali matter, it would be "inadvisable" to respond to the questions or produce documents to the Committee.[503] On March 21, 2001, Chairman Burton issued subpoenas to the Vignali's, requiring them to produce records to the Committee regarding the effort to obtain a commutation.[504] On March 22, 2001, Rucker sent a letter to the Committee stating that his clients invoked their Fifth Amendment right against self-incrimination and, therefore, would not respond to the subpoena.[505]

C. James Casso

During the Committee's investigation of the Vignali matter, James Casso emerged as a significant figure in the effort to win a commutation for Carlos Vignali. Beginning in July 2001, Committee staff began efforts to interview Mr. Casso. Mr. Casso spoke with staff but initially declined to answer any questions about his involvement in the Vignali matter. Casso explained that he wanted to see if other individuals involved in the investigation were cooperating before he decided whether to cooperate. In late July, Casso informed Committee staff that he would not answer questions in an interview but would like to receive questions in writing from the Committee. Accordingly, on July 25, 2001, Chairman Burton posed a number of written questions to Casso.[506] However, Casso failed to respond to this letter, necessitating a number of telephone calls from Committee staff. Eventually, Casso hired a lawyer and refused to cooperate with the Committee. On August 27, 2001, Mark Overland, Casso's attorney, wrote to the Chairman and stated that Casso was "unable to provide" the requested information.[507] Overland later explained that Casso could not provide the information because he had an attorney-client relationship with the Vignalis that prohibited him from discussing his work for the Vignalis. This representation was in direct conflict with earlier assurances given by Casso to Committee staff, namely that he never represented the Vignalis. It appears that Casso, like Hugh Rodham, invoked the attorney-client privilege in an overbroad and unjustified manner to avoid answering questions about his involvement in the Vignali matter.

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[502] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Edward A. Rucker, Esquire (Mar. 9, 2001) (within Appendix I).

[503] Letter from Edward A. Rucker, Esquire, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Mar. 15, 2001) (within Appendix I).

[504] Subpoena of Comm. on Govt. Reform to Horacio C. Vignali c/o Edward A. Rucker, Esquire (Mar. 21, 2001) (within Appendix II); Subpoena of Comm. on Govt. Reform to Carlos A. Vignali c/o Edward A. Rucker, Esquire (Mar. 21, 2001) (within Appendix II).

[505] Letter from Edward A. Rucker, Esquire, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Mar. 22, 2001) (within Appendix I). *See also* Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Edward A. Rucker, Esquire (Apr. 4, 2001) (within Appendix I); Letter from Edward A. Rucker, Esquire, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Apr. 6, 2001) (within Appendix I).

[506] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to James M. Casso, Partner, Alvarez-Glasman & Colvin (July 25, 2001) (within Appendix I).

[507] Letter from Mark E. Overland, Partner, Shapiro, Borenstein & Dupont, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Aug. 27, 2001) (within Appendix I).

D. Glenn Braswell

The Committee contacted Glenn Braswell's attorney, Henry F. Schuelke, and requested that Braswell participate in an interview on February 26, 2002. Through his attorney, Braswell declined to be interviewed[508] and provided no documentation regarding his relationship with Kendall Coffey and Hugh Rodham.

E. Kendall Coffey

Kendall Coffey represented Glenn Braswell in his efforts to obtain clemency. On February 16, 2001, the Committee requested all records relating to Coffey's work on the Braswell pardon. Coffey's attorney provided records relevant to the Committee's request. These records raised a number of questions, and the Committee requested an interview with Coffey to resolve several issues regarding his role in the Braswell matter in an April 10, 2001, letter. After not receiving a response from Coffey or his attorney, the Committee again requested that Coffey participate in an interview in a letter dated June 12, 2001.[509] On July 27, 2001, Coffey's attorney finally responded to the Committee by claiming that Coffey was "unable to participate in an interview" due to attorney-client privilege.[510] Without Coffey's full cooperation, the Committee has been unable to resolve questions about the relationship between Braswell, Coffey, and Rodham.

F. Gene and Nora Lum

The Lums likewise refused to cooperate with the Committee's investigation. On September 26, 2001, the Committee had Gene and Nora Lum served with a subpoena duces tecum.[511] For almost two months, both avoided repeated requests by the Committee for compliance with its subpoena. After numerous delays, the Lums finally replied to the Committee's subpoena by claiming that they had no responsive documents.[512] On February 12, 2002, Gene Lum declined to be interviewed by Committee staff unless he was granted immunity from prosecution.[513] Nora Lum likewise declined to cooperate with the Committee's investigation.[514]

G. Nicole Lum

On August 28, 2001, Committee staff briefly spoke to Nicole Lum. During that conversation, Nicole Lum described Hugh

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[508] Letter from James C. Wilson, Chief Counsel, Comm. on Govt. Reform, to Henry F. Schuelke, III, Partner, Janis, Schuelke & Wechsler (February 26, 2002) (within Appendix I) (confirmation letter).

[509] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform Committee, to Jon A. Sale, Partner, Sale & Kuehne (June 12, 2001) (within Appendix I).

[510] Letter from Jon A. Sale, Partner, Sale & Kuehne, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform Committee (July 27, 2001) (within Appendix I).

[511] Subpoena Duces Tecum from the Comm. on Govt. Reform to Gene K.H. Lum (Sept. 24, 2002) (within Appendix II); Subpoena Duces Tecum from the Comm. on Govt. Reform to Nora Lum (Sept. 24, 2002) (within Appendix II).

[512] Letter from Gene K.H. Lum to Pablo E. Carrillo, Counsel, Comm. on Govt. Reform (Nov. 14, 2001) (within Appendix I). Despite indications of Rodham's involvement in seeking executive clemency for the Lums and suggestions of some sort of "business relationship" between the Lums and Rodham, the Lums claimed that they did not have any records whatsoever relating to Rodham. *Id.*

[513] Letter from Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Gene K.H. Lum (Feb. 20, 2002) (within Appendix I) (memorializing request for prosecutorial immunity).

[514] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Nora Lum (Feb. 20, 2001) (within Appendix I).

Rodham as "a friend" and "a business associate." Committee staff then attempted to probe into Nicole Lum's (and her family's) relationship with Rodham and Rodham's efforts to obtain a presidential pardon for Gene and Nora Lum. Nicole Lum indicated that she was unwilling to submit to an interview without her attorney present. However, Nicole Lum ultimately declined to retain an attorney for purposes of the Committee's investigation. On February 12, 2002, February 15, 2002, and February 20, 2002, Committee staff attempted to interview Nicole Lum.[515] Nicole Lum has not responded to the Committee's repeated requests.

[Exhibits referred to follow:]

[515] Letter from Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to Nicole M. Lum (Feb. 20, 2002) (within Appendix I) (requesting interview and noting telephone calls made on February 12, 2002, and February 15, 2002).

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
CRIMINAL NO. 4-93-166

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**SUPERSEDING INDICTMENT**
	)	
v.	)	(18 U.S.C. §2)
	)	(18 U.S.C. §924(c)(1))
GERALD LAKEITH WILLIAMS;	)	(18 U.S.C. §1952(a))
MAXINE MACKRELL, a/k/a Naomi	)	(18 U.S.C. §1956(a)(1))
Taylor;	)	(18 U.S.C. §1956(g))
DALE MARIO EVANS;	)	(21 U.S.C. §841(a)(1))
SHIRLEY JEAN WILLIAMS, a/k/a	)	(21 U.S.C. §841(b)(1)(A))
Patty Wagner, a/k/a "Red";	)	(21 U.S.C. §841(b)(1)(B))
CLAUDE OLIVER PHILLIPS,	)	(21 U.S.C. §843(b))
a/k/a "Rico";	)	(21 U.S.C. §846)
KEITH DWANE DAWSON;	)	(21 U.S.C. § 856)
BERNARD LAFAYETTE RUTHERFORD;	)	
MELVIN CAMPBELL;	)	
JOHN DOE, a/k/a "C-Low";	)	
JOHN DOE, a/k/a "J-Bone";	)	
ANTHONY CONRAD WEBSTER, a/k/a	)	
Tony Webster;	)	
MARK KEVIN WEBSTER;	)	
SONIA ALISSA ALCARAZ;	)	
RONALD NUNN, a/k/a Chaster	)	
Davis, a/k/a "Hud";	)	
RAYMOND SHAUNDALE HOWARD;	)	
DONALD ORLANDO HOWARD;	)	
SID STRICKLAND-LANGUMS,	)	
a/k/a, "Herb";	)	
TONY NMN SPEANK, a/k/a Carl	)	
Michael Smith a/k/a "Tone";	)	
TODD LOVIS HOPSON,	)	
a/k/a Ted Shia, a/k/a "Snoop";	)	
GORNELL RANDRALL WILLIAMS;	)	
SYLVESTER CAGE, a/k/a "Vette";	)	
JAMES ERICK NUNN,	)	
a/k/a, "Binky";	)	
ANNIE MARIENE MONDY;	)	
GLOVER DERAND SMITH;	)	
JOHNNY JACKSON, a/k/a Gene;	)	
WAYMON EMMERSON ERVAN,	)	
a/k/a Ike, a/k/a "Lepp";	)	
ROBERT LEAKE,	)	
a/k/a Robert Morris;	)	
EDDIE THOMAS BRAZIEL;	)	
JIMMY COREY, a/k/a "Ware";	)	
HENRY LAVERNE PATTERSON,	)	
a/k/a "SS",	)	
	)	
Defendants.	)	

FILED 12/20/93
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTERED

EXHIBIT 1

(114)

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT ONE

From on or about a date unknown, continuing to on or about November 9, 1993, in the State and District of Minnesota, and elsewhere, the defendants,

GERALD LAREITH WILLIAMS,
MAXINE MACKRELL, a/k/a Naomi Taylor,
DALE MARIO EVANS,
SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red",
CLAUDE OLIVER PHILLIPS, a/k/a "Rico",
KEITH DWANE DAWSON,
BERNARD LAFAYETTE RUTHERFORD,
MELVIN CAMPBELL,
JOHN DOE, a/k/a "C-Low",
JOHN DOE, a/k/a "J-Bone",
ANTHONY CONRAD WEBSTER, a/k/a Tony Webster,
MARK KEVIN WEBSTER,
SONIA ALISSA ALCARAZ,
RONALD NUNN, a/k/a Chaster Davis, a/k/a "Hud",
RAYMOND SHAUNDALE HOWARD,
DONALD ORLANDO HOWARD,
SID STRICKLAND-LANGUMS, a/k/a "Herb",
TONY NMN SPEANK, a/k/a Carl Michael Smith, a/k/a "Tone",
TODD LOVIS HOPSON, a/k/a Ted Shia, a/k/a "Snoop",
GORNELL RANDRALL WILLIAMS,
SYLVESTER CAGE, a/k/a "Vette",
JAMES ERICK NUNN, a/k/a, "Binky",
ANNIE MARIENE MONDY,
GLOVER DERAND SMITH,
JOHNNY JACKSON, a/k/a Gene,
WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp",
ROBERT LEAKE, a/k/a Robert Morris,
EDDIE THOMAS BRAZIEL,
JIMMY COREY a/k/a "Ware", and,
HENRY PATTERSON, a/k/a "SS",

willfully and knowingly did combine, conspire, confederate, and agree with each other, and other persons known and unknown to the grand jury, to manufacture, to possess with intent to distribute, and to distribute more than five kilograms of a mixture and substance containing a detectable amount of cocaine and more than 50 grams of a mixture and substance containing a detectable amount

of cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(A); all in violation of Title 21, United States Code, Section 846.

OVERT ACTS

In furtherance of this conspiracy and to effect and accomplish the objects of it, one or more of the conspirators committed the following overt acts:

1. On March 2, 1988, defendant Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", attempted to possess with intent to distribute approximately one-half kilogram of cocaine in Minneapolis, Minnesota.

2. On November 20, 1989, defendant Gerald Lakeith Williams possessed with intent to distribute an ounce of cocaine in Minneapolis, Minnesota.

3. In February, 1991, defendant Bernard Lafayette Rutherford distributed three kilograms of cocaine base in Minneapolis, Minnesota.

4. On February 12, 1991, defendant Bernard Lafayette Rutherford and Ferris Valentine attempted to transport $72,614 cash by rental car from Minnesota to California.

5. On November 20, 1991, defendant Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", arranged for the distribution of one-quarter kilogram of cocaine base for $7,500.00 cash in Minneapolis, Minnesota.

6. On January 23, 1992, defendants Gerald Lakeith Williams and Maxine Mackrell, a/k/a Naomi Taylor, possessed with intent to distribute approximately seventy (70) grams of cocaine base in

Minneapolis, Minnesota.

7. On January 23, 1992, defendant Gerald Lakeith Williams possessed a nine millimeter Tech-9 semiautomatic pistol and ammunition in Minneapolis, Minnesota.

8. On April 14, 1992, defendants Gornell Randrall Williams and Robert Leake, a/k/a Robert Morris, attempted to possess with intent to distribute one-quarter kilogram of cocaine in Minneapolis, Minnesota.

9. On April 14, 1992, defendant Gornell Randrall Williams possessed a loaded thirty millimeter Luger semiautomatic pistol in Minneapolis, Minnesota.

10. On July 22, 1993, defendant Gerald Lakeith Williams initiated service, through Cellular One of Minnesota, to a mobile cellular telephone assigned telephone number (612) 840-5121.

11. Between August 18, 1993, and August 26, 1993, defendant Claude Oliver Phillips, a/k/a "Rico", travelled by car from Memphis, Tennessee, to Minneapolis, Minnesota and met with defendants Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", and Gerald Lakeith Williams.

12. On September 21, 1993, defendant Gerald Lakeith Williams initiated service to a second mobile cellular telephone, through Cellular One of Minnesota, which was assigned the telephone number (612) 840-5143.

13. On October 7, 1993, defendant Gerald Lakeith Williams flew from Minneapolis, Minnesota, to Memphis, Tennessee, to meet with defendant Claude Oliver Phillips, a/k/a "Rico".

14. On October 8, 1993, defendant Gerald Lakeith Williams

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flew from Memphis, Tennessee, to Minneapolis, Minnesota.

15. Between October 10, 1993, and October 14, 1993, defendant Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", and Donnell Williams travelled by car from Minneapolis, Minnesota, to Memphis, Tennessee, to meet with defendant Claude Oliver Phillips, a/k/a "Rico".

16. On October 13, 1993, defendant Gerald Lakeith Williams telephoned defendant Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", in Memphis, Tennessee. During this telephone conversation Shirley Williams informed her son that she was "ready to leave" the Memphis area after driving there from Minneapolis. Shirley Williams further stated that the person she was in Memphis to meet was "paranoid" and wanted "things to do [sic] exactly his way." In response, Gerald Williams stated he "can't do it like that" and that he was "spending" the money. After discussing the time it had taken to drive to Memphis from Minneapolis, Shirley Williams stated that the "game [sic] been cancelled".

17. On October 13, 1993, defendant Gerald Lakeith Williams telephoned defendant Dale Mario Evans in Pasadena, California. During this telephone conversation Dale Evans asked Gerald Williams "did you want to get something." Gerald Williams responded "not that way," and that he knew that Evans was not "dry". Evans replied that driving was difficult and that if a person got "caught driving, he's through." Gerald Williams then asked how much would it cost if a person "came and got it back himself." Evans stated that it would cost "two twist" or "twenty-seven".

18. On October 14, 1993, defendant Shirley Jean Williams,

a/k/a Patty Wagner, a/k/a "Red", telephoned defendant Gerald Lakeith Williams. During this telephone conversation Shirley Williams asked Gerald Williams to tell his brother, Gornell Williams, about his recent contacts with "Rico". Gerald subsequently stated to his brother Gornell that "Rico" had acted like a "basehead" and was a problem. Gornell Williams responded by asking Gerald if that was why he "got back so quickly", to which Gerald responded "yeah". After concluding his discussion with Gornell, Gerald Williams continued his telephone conversation with his mother, Shirley Williams . Shirley Williams stated that Claude Phillips "got five, he got too many", and informed Gerald that "Rico" wanted Gerald to contact him. In response, Gerald stated that he "would have got three" and that he would "never go back for nothing." Finally, Gerald stated to his mother that he did not understand why she "came back empty handed."

19. On October 16, 1993, defendant Claude Oliver Phillips, a/k/a "Rico", telephoned defendant Gerald Lakeith Williams from Memphis, Tennessee. During this telephone conversation Claude Phillips told Gerald Williams that he should "come on down here whenever you get ready," and that "he can't be in no rush."

20. On October 19, 1993, defendant Dale Mario Evans flew from Los Angeles, California, to Minneapolis, Minnesota, to meet with defendant Gerald Lakeith Williams.

21. On October 21, 1993, defendants Gerald Lakeith Williams, Dale Mario Evans, Ronald Nunn, a/k/a Chaster Davis, a/k/a "Hud", and Todd Lovis Hopson, a/k/a Ted Shia, a/k/a "Snoop", possessed with intent to distribute multiple kilograms of cocaine in the

Minneapolis, Minnesota metropolitan area.

22. On October 22, 1993, defendants Gerald Lakeith Williams and Waymon Emmerson Ervan, a/k/a Ike, a/k/a "Lepp", manufactured multiple ounces of cocaine base in Minneapolis, Minnesota.

23. On October 22, 1993, defendant Johnny Jackson, a/k/a Gene, possessed with intent to distribute approximately forty-two grams of cocaine base in Minneapolis, Minnesota.

24. On October 24, 1993, defendants Gerald Lakeith Williams and Ronald Nunn, a/k/a Chaster Davis, a/k/a "Hud", possessed with intent to distribute approximately four ounces of cocaine base in Minneapolis, Minnesota.

25. On October 26, 1993, defendant Eddie Thomas Braziel received and distributed a quantity of cocaine in Minneapolis, Minnesota.

26. On October 27, 1993, defendant Dale Mario Evans arranged for a package containing approximately six kilograms of cocaine to be shipped by U.S. mail from California to 6508 Zane Avenue North, Apartment #913, in Brooklyn Park, Minnesota.

27. On October 29, 1993, defendants Gerald Lakeith Williams, Sid Strickland-Langums, a/k/a "Herb", and James Erick Nunn, a/k/a "Binky", discussed a narcotics transaction via telephone.

28. On October 31, 1993, defendant Dale Mario Evans telephoned defendant Gerald Lakeith Williams from California. During their telephone conversation Dale Evans stated "the love never got there?" to which Williams responded "no". Evans further discussed his contacts with the postal service regarding delivery of a package to "Hud's" house.

29. On November 1, 1993, defendant Dale Mario Evans shipped a package containing approximately one kilogram of cocaine from Altadena, California, to 2929 30th Avenue South, Minneapolis, Minnesota, the home address of defendant Annie Mariene Mondy.

30. On November 1, 1993, defendant Gerald Lakeith Williams met with defendant Anthony Conrad Webster, a/k/a Tony Webster, in Minneapolis, Minnesota. Following this meeting, Tony Webster distributed approximately one kilogram of cocaine to Gerald Williams.

31. On November 1, 1993, defendants Gerald Lakeith Williams and Waymon Emmerson Ervan, a/k/a Ike, a/k/a "Lepp", manufactured approximately one kilogram of cocaine base at the residence of defendant Jimmy Corey, a/k/a "Ware", in Minneapolis, Minnesota.

32. On November 1, 1993, defendants Gerald Lakeith Williams and Sid Strickland-Langums, a/k/a "Herb", possessed with intent to distribute and distributed approximately one kilogram of cocaine base in Minneapolis, Minnesota.

33. On November 4, 1993, defendant Anthony Conrad Webster, a/k/a Tony Webster, telephoned defendant Gerald Lakeith Williams to discuss a cocaine transaction. During this telephone conversation Tony Webster stated that "its on, man", to which Williams responded by asking if he could go to "second base". Tony Webster stated that Williams could only get to "first base" on that day, and would be able to get to "first base again tomorrow".

34. On November 4, 1993, defendants Anthony Conrad Webster, a/k/a Tony Webster, and Mark Kevin Webster distributed approximately one kilogram of cocaine in Minneapolis, Minnesota.

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35. On November 4, 1993, defendants Gerald Lakeith Williams, Waymon Emmerson Ervan, a/k/a "Ike", a/k/a "Lepp", and Tony NMN Speank, a/k/a Carl Michael Smith, a/k/a "Tone", manufactured and possessed with intent to distribute approximately one kilogram of cocaine base at 3538 Newton Avenue North in Minneapolis, Minnesota.

36. On November 5, 1993, defendants Gerald Lakeith Williams Anthony Conrad Webster, a/k/a Tony Webster, and Mark Kevin Webster flew together from Minneapolis, Minnesota, to Las Vegas, Nevada.

37. On November 8, 1993, defendant Raymond Shaundale Howard telephoned defendant Gerald Lakeith Williams. During this telephone conversation Williams told Howard about "Mizark's people" and that they had a "100 percent guarantee". Williams further stated that the "ticket is two-three".

38. On November 8, 1993, defendant Gerald Williams obtained a sum of money from defendant Raymond Shaundale Howard and provided it to Tony Webster as part of a payment of money for cocaine.

39. On November 8, 1993, defendants Anthony Conrad Webster, a/k/a Tony Webster, and Sonia Alissa Alcaraz, attempted to ship a package containing approximately $88,000.00 cash from Minneapolis, Minnesota, to defendant Keith Dwane Dawson in Las Vegas, Nevada.

40. On November 9, 1993, defendants Anthony Conrad Webster, a/k/a Tony Webster, and Sonia Alissa Alcaraz possessed with intent to distribute approximately four ounces of cocaine in Minneapolis, Minnesota.

41. On November 9, 1993, defendant Donald Orlando Howard possessed with intent to distribute approximately one ounce of cocaine base in Minneapolis, Minnesota.

42. On November 9, 1993, defendant Glover Derand Smith possessed with intent to distribute approximately one ounce of cocaine base in Minneapolis, Minnesota.

43. On November 9, 1993, defendant Annie Mariene Mondy possessed with intent to distribute approximately sixteen ounces of cocaine in Minneapolis, Minnesota.

44. On November 9, 1993, defendant Tony NMN Speank, a/k/a Carl Michael Smith, a/k/a "Tone", possessed with intent to distribute a quantity of cocaine base, and possessed a loaded nine millimeter Glock semiautomatic pistol in Minneapolis, Minnesota.

45. On November 9, 1993, defendant Todd Lovis Hopson, a/k/a Ted Shia, a/k/a "Snoop", possessed a nine millimeter semiautomatic pistol in Apple Valley, Minnesota.

46. On November 9, 1993, defendant Sid Strickland-Langums, a/k/a "Herb", possessed a loaded nine millimeter Glock semiautomatic pistol in Robbinsdale, Minnesota.

47. On November 9, 1993, defendants Shirley Jean Williams, a/k/a Patty Wagner, a/k/a "Red", and Cornell Randrall Williams possessed two semiautomatic rifles, including an AR-15 semiautomatic assault rifle, in Burnsville, Minnesota.

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COUNT TWO

On or about the 11th day of February, 1991, in the State and District of Minnesota and elsewhere, defendants,

SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", and, BERNARD LAFAYETTE RUTHERFORD,

each aiding and abetting the other, did knowingly and willfully conduct, and attempt to conduct, a financial transaction affecting interstate commerce, knowing that the property involved in the financial transaction represented the proceeds, approximately $72,614.00, from the unlawful distribution of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Section 841(a)(1), and further knowing that the transaction was an attempt to promote and carry on specified unlawful activity by causing these proceeds to be transported from Minnesota to California, in violation of Title 18, United States Code, Sections 2 and 1956(a)(1)(A)(i).

COUNT THREE

On or about the 13th day of April, 1992, in the State and District of Minnesota, in the State of California, and elsewhere, defendants,

GERALD LAKEITH WILLIAMS, and, MELVIN CAMPBELL,

each aiding and abetting the other, did knowingly and willfully conduct, and attempt to conduct, a financial transaction affecting interstate commerce, knowing that the property involved in the financial transaction represented the proceeds, approximately $38,000.00, from the unlawful distribution of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21,

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United States Code, Section 841(a)(1), and further knowing that the transaction was an attempt to promote and carry on specified unlawful activity in violation of Title 18, United States Code, Sections 2 and 1956(a)(1)(A)(i).

COUNT FOUR

On or about the 23rd day of January, 1992, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS, and,
MAXINE MACKRELL, a/k/a Naomi Taylor,

each aiding and abetting the other, did knowingly, intentionally and unlawfully possess with intent to distribute a quantity in excess of 50 grams of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), and, Title 18, United States Code, Section 2.

COUNT FIVE

On or about the 23rd day of January, 1992, in the State and District of Minnesota, defendant,

GERALD LAKEITH WILLIAMS,

did knowingly and unlawfully use and carry a firearm, namely, an IntraTech nine millimeter semiautomatic pistol, during and in relation to a drug trafficking crime, that being his intentional and unlawful possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, as set forth in Count Four of this Superseding Indictment, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT SIX

On or about the 23rd day of January, 1992, in the State and District of Minnesota, defendant,

MAXINE MACKRELL, a/k/a Naomi Taylor,

did control an apartment, room and enclosure as the renter and lessee, and unlawfully, knowingly and intentionally make available for use, with and without compensation, this apartment, room and enclosure for the purpose of storing and distributing cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 856.

COUNT SEVEN

On or about the 14th day of April, 1992, in the State and District of Minnesota, defendants,

GORNELL RANDRALL WILLIAMS, and
ROBERT LEAKE, a/k/a Robert Morris,

each aiding and abetting the other, did knowingly, intentionally and unlawfully attempt to possess with intent to distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841 (a)(1), in violation of Title 21, United States Code, Section 846 and Title 18, United States Code, Section 2.

COUNT EIGHT

On or about the 14th day of April, 1992, in the State and District of Minnesota, defendant,

GORNELL RANDRALL WILLIAMS,

knowingly and unlawfully did use and carry a firearm, namely, a Luger semiautomatic pistol, during and in relation to a drug trafficking crime, that being his intentional and unlawful attempted possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, as set forth in Count Seven of this Superseding Indictment, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT NINE

On or about the 17th day of May, 1992, in the State and District of Minnesota, in the State of California, and elsewhere, defendants,

GERALD LAKEITH WILLIAMS, and,
MELVIN CAMPBELL,

each aiding and abetting the other, did knowingly and willfully conduct, and attempt to conduct, a financial transaction affecting interstate commerce, knowing that the property involved in the financial transaction represented the proceeds, approximately $43,000.00, from the unlawful distribution of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Section 841(a)(1), and further knowing that the transaction was an attempt to promote and carry on specified unlawful activity all in violation of Title 18, United States Code, Sections 2 and 1956(a)(1)(A)(i).

COUNT TEN

On or about the 20th day of October, 1993, in the State and District of Minnesota and elsewhere, defendants,

GERALD LAKEITH WILLIAMS,
DALE MARIO EVANS,
TODD LOVIS HOPSON, a/k/a Ted Shia, a/k/a "Snoop",
JOHN DOE, a/k/a "C-Low", and,
JOHN DOE, a/k/a "T-Bone",

each aiding and abetting the other, did use and cause to be used a facility in interstate commerce, namely, United Parcel Service, to ship a package containing cocaine from the State of California to the State of Minnesota, with intent to establish and carry on an unlawful activity, said unlawful activity being the distribution of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Section 841 (a)(1), and thereafter the defendants did perform and attempt to perform acts to establish and carry on said unlawful activity, all in violation of Title 18, United States Code, Sections 2 and 1952(a).

COUNT ELEVEN

On or about the 21st day of October, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS,
DALE MARIO EVANS,
RONALD NUNN, a/k/a Chaster Davis, a/k/a "Hud", and,
TODD LOVIS HOPSON, a/k/a Ted Shia, a/k/a "Snoop",

each aiding and abetting the other, did knowingly, intentionally and unlawfully possess with intent to distribute and distribute a quantity in excess of five kilograms of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections

841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.

COUNT TWELVE

On or about the 22nd day of October, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS, and,
WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp",

each aiding and abetting the other, did knowingly, intentionally and unlawfully manufacture a quantity in excess of 50 grams of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), and, Title 18, United States Code, Section 2.

COUNT THIRTEEN

On or about the 22nd day of October, 1993, in the State and District of Minnesota, defendant,

JOHNNY JACKSON, a/k/a Gene,

did knowingly, intentionally and unlawfully possess with intent to distribute and distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1).

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COUNT FOURTEEN

On or about the 22nd day of October, 1993, in the State and District of Minnesota and elsewhere, defendant,

DALE MARIO EVANS,

did travel in interstate commerce from the State of Minnesota to the State of California, with intent to distribute the proceeds of an unlawful activity, said activity being the unlawful distribution of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Section 841 (a)(1), and thereafter the defendant did perform and attempt to perform acts to distribute the proceeds of said unlawful activity, all in violation of Title 18, United States Code, Section 1952(a).

COUNT FIFTEEN

On or about the 26th day of October, 1993, in the State and District of Minnesota, defendant,

EDDIE THOMAS BRAZIEL,

did knowingly, intentionally and unlawfully possess with intent to distribute and distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1).

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COUNT SIXTEEN

On or about the 27th day of October, 1993, in the State and District of Minnesota and elsewhere, the defendants,

GERALD LAKEITH WILLIAMS,
DALE MARIO EVANS,
JOHN DOE, a/k/a "C-Low", and,
JOHN DOE, a/k/a "J-Bone",

each aiding and abetting the other, did use and cause to be used a facility in interstate commerce, that is, the United States mail, to ship a package containing cocaine from the State of California, to the State of Minnesota, with intent to establish and carry on an unlawful activity, said unlawful activity being the distribution of controlled substances, specifically, cocaine and cocaine base in violation of Title 21, United States Code, Section 841 (a)(1), and thereafter the defendants did perform and attempt to perform acts to establish and carry on said unlawful activity, all in violation of Title 18, United States Code, Sections 2 and 1952(a).

COUNT SEVENTEEN

On or about the 28th day of October, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS,
DALE MARIO EVANS,
RONALD NUNN, a/k/a Chaster Davis, a/k/a "Kud", and,
HENRY PATTERSON, a/k/a "SS,

each aiding and abetting the other, did knowingly, intentionally and unlawfully attempt to possess with intent to distribute in excess of 5 kilograms of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841 (a)(1) and 841(b)(1)(A), all in violation of Title 21, United States Code,

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Section 846 and Title 18, United States Code, Section 2.

COUNT EIGHTEEN

On or about the 1st day of November, 1993, in the State and District of Minnesota and elsewhere, defendants,

GERALD LAREITH WILLIAMS,
DALE MARIO EVANS,
SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", and,
ANNIE MARIENE MONDY,

each aiding and abetting the other, did use and cause to be used a facility in interstate commerce, namely, the United States mail, to ship a package containing cocaine from the State of California, to the State of Minnesota, with intent to establish and carry on an unlawful activity, said unlawful activity being the distribution of cocaine and cocaine base in violation of Title 21, United States Code, Section 841 (a)(1), and thereafter the defendants did perform and attempt to perform acts to establish and carry on said unlawful activity, all in violation of Title 18, United States Code, Sections 2 and 1952(a).

COUNT NINETEEN

On or about the 1st day of November, 1993, in the State and District of Minnesota, defendants,

GERALD LAREITH WILLIAMS, and,
WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp",

each aiding and abetting the other, did knowingly, intentionally and unlawfully manufacture a quantity in excess of 50 grams of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A), and, Title 18, United States Code, Section 2.

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COUNT TWENTY

On or about the 1st day of November, 1993, in the State and District of Minnesota, defendant,

JIMMY COREY, a/k/a "Ware",

did control an apartment, room and enclosure as the renter and lessee, and unlawfully, knowingly and intentionally make available for use, with and without compensation, this apartment, room and enclosure for the purpose of manufacturing cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 856.

COUNT TWENTY-ONE

On or about the 1st day of November, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS, and,
SID STRICKLAND-LANGUMS, a/k/a "Herb",

each aiding and abetting the other, did knowingly, intentionally and unlawfully distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

COUNT TWENTY-TWO

On or about the 4th day of November, 1993, in the State and District of Minnesota, defendants,

MARK KEVIN WEBSTER, and,
ANTHONY CONRAD WEBSTER, a/k/a Tony Webster,

each aiding and abetting the other, did knowingly, intentionally and unlawfully distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled

substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

COUNT TWENTY-THREE

On or about the 4th day of November, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS,
WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp",
SID STRICKLAND-LANGUMS, a/k/a "Herb", and,
TONY NMN SPEANR, a/k/a Carl Michael Smith a/k/a "Tone",

each aiding and abetting the other, did knowingly, intentionally and unlawfully manufacture, possess with intent to distribute, and distribute a quantity of a mixture and substance containing detectable amounts of cocaine and cocaine base, Schedule II controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B), and Title 18, United States Code, Section 2.

COUNT TWENTY-FOUR

On or about the 8th day of November, 1993, in the State and District of Minnesota and elsewhere, defendants,

ANTHONY CONRAD WEBSTER, a/k/a Tony Webster,
MARK KEVIN WEBSTER,
GERALD LAKEITH WILLIAMS,
KEITH DWANE DAWSON,
RAYMOND SHAUNDALE HOWARD, and,
SONIA ALISSA ALCARAZ,

each aiding and abetting the other, did use and attempt to use a facility in interstate commerce, namely, Federal Express, to ship a package containing U.S. currency from the State of Minnesota to the State of Nevada, with intent to distribute the proceeds of unlawful activity, specifically, the proceeds of the distribution of cocaine and cocaine base, Schedule II controlled substances, in

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violation of Title 21, United States Code, Section 841 (a)(1), and thereafter did attempt to distribute the proceeds of unlawful activity, namely, the proceeds of the distribution of cocaine and cocaine base, all in violation of Title 18, United States Code, Sections 2 and 1952(a).

COUNT TWENTY-FIVE

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendants,

ANTHONY CONRAD WEBSTER, a/k/a Tony Webster, and, SONIA ALISSA ALCARAZ,

each aiding and abetting the other, did knowingly and intentionally possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

COUNT TWENTY-SIX

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

SONIA ALISSA ALCARAZ,

did control an apartment, room and enclosure as the renter and lessee, and unlawfully, knowingly and intentionally make available for use, with and without compensation, this apartment, room and enclosure for the purpose of storing and distributing cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 856.

COUNT TWENTY-SEVEN

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

ANNIE MARIENE MONDY,

did knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT TWENTY-EIGHT

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

ANNIE MARIENE MONDY,

did control a house, room and enclosure as the renter and lessee, and unlawfully, knowingly and intentionally make available for use, with and without compensation, this house, room and enclosure for the purpose of storing and distributing cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 856.

COUNT TWENTY-NINE

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

TONY NMN SPEANK, a/k/a Carl Michael Smith a/k/a "Tone",

did knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT THIRTY

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

TONY NMN SPEANK, a/k/a Carl Michael Smith a/k/a "Tone",

did knowingly and unlawfully use and carry a firearm, namely, a nine millimeter Glock semiautomatic pistol, during and in relation to a drug trafficking crime, that being his intentional and unlawful possession with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, as set forth in Count Twenty-Nine of this Superseding Indictment, in violation of Title 18, United States Code, Section 924(c)(1).

COUNT THIRTY-ONE

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

GLOVER DERAND SMITH,

did knowingly, intentionally and unlawfully possess with intent to distribute a quantity in excess of 5 grams of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

COUNT THIRTY-TWO

On or about the 9th day of November, 1993, in the State and District of Minnesota, defendant,

DONALD ORLANDO HOWARD,

did knowingly, intentionally and unlawfully possess with intent to distribute a quantity in excess of 5 grams of a mixture and substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B).

COUNT THIRTY-THREE

From on or about the 30th day of March, 1993, and continuing until on or about the 9th day of November, 1993, in the State and District of Minnesota, defendants,

GERALD LAKEITH WILLIAMS, and,
SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red",

and others know and unknown to the grand jury, did knowingly, willfully and unlawfully combine, conspire, confederate, and agree together to commit an offense against the United States, by conducting and attempting to conduct financial transactions affecting interstate commerce, knowing that the property involved in the financial transactions represented the proceeds from specified unlawful activity, and further knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

MANNER AND MEANS

It was part of the conspiracy that GERALD LAKEITH WILLIAMS and SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", conducted and attempted to conduct financial transactions with the proceeds from the unlawful distribution of cocaine and cocaine base to conceal and disguise the nature and source of money used to make the deposit and monthly rent payments for apartment #1107 located at 1400 Laurel Avenue in Minneapolis, Minnesota.

OVERT ACTS

1. On March 30, 1993, SHIRLEY WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", applied for and made a $300.00 deposit on apartment #1107 at 1400 Laurel Avenue, Minneapolis, Minnesota, using the fictitious name of "Patty Wagner".

2. On the rental application SHIRLEY WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", represented her source of income as totalling approximately $3,100.00 per month derived from her employment as a sales manager at Don's Appliance, 110 West Broadway, Minneapolis, Minnesota.

3. On April 26, 1993, SHIRLEY WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", used the fictitious name of "Patty Wagner" to apply for a vehicle parking registration permit at 1400 Laurel for a Chevrolet Blazer, Minnesota license 218HEN, known to be used by GERALD LAKEITH WILLIAMS.

4. On or about April 26, 1993, through on or about November 9, 1993, GERALD LAKEITH WILLIAMS occupied and resided in apartment #1107 at 1400 Laurel Avenue, Minneapolis, Minnesota.

5. SHIRLEY WILLIAMS, a/k/a Patty Wagner, a/k/a "Red", and

GERALD LAKEITH WILLIAMS made, or caused to be made, the following monthly rental payments to be applied toward apartment #1107 at 1400 Laurel, Minneapolis, Minnesota:

Date	Amount	Method of Payment
5/1/93	$890.00	Cash
6/5/93	$880.00	Money Order
7/9/93	$930.00	Money Order
8/4/93	$870.00	Money Order
9/10/93	$400.00	Money Order
	$400.00	Money Order
	$ 80.00	Money Order
10/4/93	$700.00	Money Order
	$180.00	Money Order
11/6/93	$930.00	Money Order
TOTAL	$6,250.00	

all in violation of Title 18, United States Code, Section 1956(g).

COUNT THIRTY-FOUR

From on or about the 13th day of October, 1993, continuing until on or about the 16th day of November, 1993, in the State and District of Minnesota, in the state of California, and elsewhere, defendants,

GERALD LAKEITH WILLIAMS,
DALE MARIO EVANS,
SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red",
CLAUDE OLIVER PHILLIPS, a/k/a "Rico",
JOHN DOE, a/k/a "C-Low",
JOHN DOE, a/k/a "J-Bone",
ANTHONY CONRAD WEBSTER, a/k/a Tony Webster,
MARK KEVIN WEBSTER,
RONALD NUNN, a/k/a Chaster Davis, a/k/a "Hud",
RAYMOND SHAUNDALE HOWARD,
DONALD ORLANDO HOWARD,
SID STRICKLAND-LANGUMS, a/k/a "Herb",
TONY NMN SPEANK, a/k/a Carl Michael Smith, a/k/a "Tone",
TODD LOVIS HOPSON, a/k/a Ted Shia, a/k/a "Snoop",
GORNELL RANDRALL WILLIAMS,
SYLVESTER CAGE, a/k/a "Vette",
JAMES ERICK NUNN, a/k/a, "Binky",
EDDIE THOMAS BRAZIEL,
ANNIE MARIENE MONDY,
GLOVER DERAND SMITH,
JOHNNY JACKSON, a/k/a Gene,
WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp",
JIMMY COREY a/k/a "Ware", and,
HENRY PATTERSON, a/k/a "SS",

each aiding and abetting the other, did knowingly, intentionally, and unlawfully use several communication facilities, namely, a mobile cellular telephone, electronic serial number ("ESN") 13011154613, subscribed to by GERALD LAKEITH WILLIAMS; a mobile cellular telephone, ESN 13300484399, subscribed to by GERALD LAKEITH WILLIAMS; and, a telephone assigned the telephone number (612) 895-1966, subscribed to by SHIRLEY JEAN WILLIAMS, in causing and facilitating the commission of acts constituting felonies under the Controlled Substances Act, Title 21, United States Code,

Sections 801 *et.seq.*, as more specifically described in Count One of this Superseding Indictment, all in violation of Title 21, United States Code, Section 843(b) and Title 18, United States Code, Section 2.

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON

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IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

NITED STATES OF AMERICA

v. Docket No. CR 4-93-166
Defendant No. (09)

JOHN DOE,
a/k/a "C-Low,"
True Name: Carlos Vignali, Jr.

PRESENTENCE INVESTIGATION

Prepared For: The Honorable David S. Doty
U.S. District Judge

Prepared By: Joan L. White
U.S. Probation Officer
426 U.S. Courthouse
110 South Fourth Street
Minneapolis, MN 55401-2295
612/348-1980

Assistant U.S. Attorney
Denise D. Reilly
234 U.S. Courthouse
110 South Fourth Street
Minneapolis, MN 55401
612/348-1500

Defense Counsel
Ronald I. Meshbesher
1616 Park Avenue
Minneapolis, MN 55404
612/339-9121

Daniel G. Davis
Penthouse Glendale Federal Savings
9454 Wilshire Boulevard
Beverly Hills, CA 90212
310/659-5800

Plea/Verdict: On December 12, 1994, the defendant was found guilty of Counts 1, 16, and 34 by jury verdict.

Offense: Count 1: Conspiracy to Manufacture, Possess with the Intent to Distribute, and Distribute More than 5 Kilograms of Cocaine and More than 50 Grams of Cocaine Base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846.

Count 16: Aiding and Abetting Using a Facility in Interstate Commerce with the Intent to Distribute Cocaine and Cocaine Base, in violation of 18 U.S.C. § 1952(a).



Defendant's Name:	JOHN DOE
a/k/a:	"C-Low"
True Name:	Carlos Vignali, Jr.
Docket Number:	CR 4-93-166(09)

	Count 34: Aiding and Abetting Using Communication Facilities Under the Controlled Substance Act, in violation of 21 U.S.C. § 843(b) and 18 U.S.C. § 2.
Statutory Penalty:	Count 1: Ten years to life imprisonment; five years supervised release; $4,000,000 fine; and $50 special assessment. Count 16: Five years imprisonment; three years supervised release; $250,000 fine; and $50 special assessment. Count 34: Four years imprisonment; one year supervised release; $250,000 fine; and $50 special assessment.
Mandatory Minimum:	YES
Plea Agreement:	None.
Arrest Date:	May 6, 1994
Custodial Status:	May 12, 1994: Released on a $250,000 cash bond. December 12, 1994: Remanded to custody.
Detention:	Defendant IS subject to the mandatory detention provisions under 18 U.S.C. § 3143
Detainers:	None.
Codefendants:	See attached.
Date Report Prepared:	January 18, 1995
Date Revised:	No revisions
Date Submitted to Court:	February 13, 1995
Identifying Data:	
Date of Birth:	[redacted]
Race:	White (Hispanic)
Sex:	Male
Social Security Number:	
U.S. Marshal Number:	[redacted]
FBI Number:	
Citizenship:	United States

Defendant's Name:	JOHN DOE
a/k/a:	"C-Low"
True Name:	Carlos Vignali, Jr.
ocket Number:	CR 4-93-166(09)

Number of Dependents:	None
Educational Level:	Tenth Grade
Legal Address:	[redacted]
Telephone:	
Disposition:	July 17, 1995: Custody of the Bureau of Prisons 175 months; 5 years supervised release with standard conditions and drug aftercare condition; no fine; and $150 special assessment. In custody.

STATUS OF CODEFENDANTS AS OF FEBRUARY 13, 1995

(Superseding Indictment Docket No. CR 4-93-166)

GERALD LAKEITH WILLIAMS, (01), pled guilty to Counts 1, 5, and 9 of the Superseding Indictment on May 20, 1994.

MAXINE MACKRELL, a/k/a Naomi Taylor, (02), pled guilty to Count 6 of the Superseding Indictment on June 17, 1994.

DALE MARIO EVANS, (03), pled guilty to Count 1 of the Superseding Indictment on June 28, 1994.

SHIRLEY JEAN WILLIAMS, a/k/a Patty Wagner, a/k/a "Red," (04), pled guilty to Counts 1 and 33 of the Superseding Indictment on May 31, 1994.

CLAUDE OLIVER PHILLIPS, a/k/a "Rico," (05), was found not guilty on all counts on December 7, 1994.

KEITH DWANE DAWSON, (06), pled guilty to Count 1 of the Superseding Indictment on June 29, 1994.

BERNARD LAFAYETTE RUTHERFORD, (07), pled guilty to a one-count Information on July 1, 1994.

MELVIN CAMPBELL, (08), pled guilty to a one-count Information on November 21, 1994.

JOHN DOE, a/k/a "C-Low," True name: Carlos Vignali, Jr., (09), found guilty on Counts 1, 16, and 34 of the Superseding Indictment on December 12, 1994. He was found not guilty on that date of Count 10.

JOHN DOE, a/k/a "J-Bone," True name: Jonathan Gray, (10), pled guilty to Count 1 on October 26, 1994.

ANTHONY CONRAD WEBSTER, a/k/a Tony Webster, (11), pled guilty to Count 1 of the Superseding Indictment on June 16, 1994.

MARK KEVIN WEBSTER, (12), pled guilty to Count 1 of the Superseding Indictment on July 13, 1994.

SONIA ALISSA ALCARAZ, (13), pled guilty to Count 26 of the Superseding Indictment on June 16, 1994.

RONALD NUNN, a/k/a Chaster Davis, a/k/a "Hud," (14), pled guilty to Count 34 of the Superseding Indictment on July 1, 1994.

RAYMOND SHAUNDALE HOWARD, (15), pled guilty to Count 1 of the Superseding Indictment on July 12, 1994.

DONALD ORLANDO HOWARD, (16), pled guilty to Count 32 of the Superseding Indictment on June 28, 1994.

SID STRICKLAND-LANGUMS, a/k/a "Herb," (17), pled guilty to Count 1 of the Superseding Indictment on June 28, 1994.

TONY NMN SPEANK, a/k/a Carl Michael Smith, a/k/a "Tone," True Name: Tony Speight, (18), pled guilty to Counts 1 and 30 of the Superseding Indictment on June 9, 1994.

TODD LOUIS HOPSON, a/k/a Ted Shia, a/k/a "Snoop," (19), found guilty on Counts 1, 10, 11, and 34 of the Superseding Indictment on December 7, 1994.

GORNELL RANDRALL WILLIAMS, (20), pled guilty to Counts 7 and 8 of the Superseding Indictment on June 21, 1994.

SYLVESTER CAGE, a/k/a "Vette," (21), pled guilty to Count 34 of the Superseding Indictment on July 12, 1994.

JAMES ERICK NUNN, a/k/a "Binky," (22), pled guilty to Count 34 of the Superseding Indictment on February 25, 1994.

ANNIE MARIENE MONDY, (23), pled guilty to Count 28 of the Superseding Indictment on July 1, 1994.

GLOVER DERAND SMITH, (24), pled guilty to Count 34 of the Superseding Indictment on July 7, 1994.

JOHNNY JACKSON, a/k/a Gene, (25), pled guilty to Count 34 of the Superseding Indictment on July 13, 1994.

WAYMON EMMERSON ERVAN, a/k/a Ike, a/k/a "Lepp," (26), pled guilty to Count 34 of the Superseding Indictment on July 1, 1994.

ROBERT LEAKE, a/k/a Robert Morris, (27), pled guilty to Count 7 of the Superseding Indictment on May 25, 1994.

EDDIE THOMAS BRAZIEL, (28), pled guilty to Count 34 of the Superseding Indictment on June 28, 1994.

JIMMY COREY, a/k/a "Ware," (29), pled guilty to a one-count Information on July 12, 1994.

HENRY LAVERNE PATTERSON, a/k/a "SS," (30), pled guilty to Count 34 of the Superseding Indictment on July 1, 1994.

(Indictment Docket No. CR 4-94-68)

ANDRE MADDOX, (01), pled guilty to a one-count Indictment on July 12, 1994.

PART A. THE OFFENSE

Charges and Convictions

1. On December 20, 1993, a 34-count Superseding Indictment was filed in the District of Minnesota charging the defendants, Gerald Lakeith Williams; Maxine Mackrell; Dale Mario Evans; Shirley Jean Williams; Claude Oliver Phillips; Keith Dwane Dawson; Bernard LaFayette Rutherford; Melvin Campbell; John Doe, a/k/a "C-Low"; John Doe, a/k/a "J-Bone"; Anthony Conrad Webster; Mark Kevin Webster; Sonia Alissa Alcaraz; Ronald Nunn; Raymond Shaundale Howard; Donald Orlando Howard; Sid Strickland-Langums; Tony Speank; Todd Louis Hopson; Gornell Randrall Williams; Sylvester Cage; James Erick Nunn; Annie Mariene Mondy; Glover Derand Smith; Johnny Jackson; Waymon Emmerson Ervan; Robert Leake; Eddie Thomas Braziel; Jimmy Corey; and Henry Laverne Patterson, with:

Count 1: Charged all defendants with Conspiracy to Manufacture, Possess with the Intent to Distribute, and Distribute More Than 5 Kilograms of Cocaine and More Than 50 Grams of Cocaine Base from on or about a date unknown to on or about November 9, 1993, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846.

Count 2: Charged Shirley Jean Williams and Bernard Lafayette Rutherford with Aiding and Abetting the Attempt to Conduct a Financial Transaction Affecting Interstate Commerce Involving Approximately $72,614 from the Unlawful Distribution of Cocaine and Cocaine Base on or about February 11, 1991, in violation of 18 U.S.C. § 1956(a)(1)(A)(i).

Count 3: Charged Gerald Lakeith Williams and Melvin Campbell with Aiding and Abetting the Attempt to Conduct a Financial Transaction Affecting Interstate Commerce Involving Approximately $38,000 from the Unlawful Distribution of Cocaine and Cocaine Base on or about April 13, 1992, in violation of 18 U.S.C. § 1956(a)(1)(A)(i).

Count 4: Charged Gerald Lakeith Williams and Maxine Mackrell with Aiding and Abetting Possession with the Intent to Distribute in Excess of 50 Grams of Cocaine Base on or about January 23, 1992, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2.

Count 5: Charged Gerald Lakeith Williams with Using and Carrying a Firearm, Namely, an IntraTech

9 Millimeter Semiautomatic Pistol, During and in Relation to a Drug Trafficking Crime on or about January 23, 1992, in violation of 18 U.S.C. § 924(c)(1).

Count 6: Charged Maxine Mackrell with Maintaining a Place for the Storing and Distribution of Cocaine Base on or about January 23, 1992, in violation of 21 U.S.C. § 856.

Count 7: Charged Gornell Randrall Williams and Robert Leake with Aiding and Abetting Possession with the Intent to Distribute Cocaine on or about April 14, 1992, in violation of 21 U.S.C. §§ 841(a)(1) and 846 and 18 U.S.C. § 2.

Count 8: Charged Gornell Randrall Williams with Using and Carrying a Firearm, Namely, a Luger Semiautomatic Pistol, During and in Relation to a Drug Trafficking Crime on or about April 14, 1992, in violation of 18 U.S.C. § 924(c)(1).

Count 9: Charged Gerald Lakeith Williams and Melvin Campbell with Aiding and Abetting Conducting a Financial Transaction Affecting Interstate Commerce Involving Approximately $43,000 from the Unlawful Distribution of Cocaine and Cocaine Base on or about May 17, 1992, in violation of 18 U.S.C. §§ 2 and 1956(a)(1)(A)(i).

Count 10: Charged Gerald Lakeith Williams, Dale Mario Evans, Todd Louis Hopson, John Doe (a/k/a "C-Low"), and John Doe (a/k/a "J-Bone") with Aiding and Abetting Using a Facility in Interstate Commerce with the Intent to Distribute Cocaine and Cocaine Base on or about October 20, 1993, in violation of 18 U.S.C. §§ 2 and 1952(a).

Count 11: Charged Gerald Lakeith Williams, Dale Mario Evans, Ronald Nunn, and Todd Louis Hopson with Aiding and Abetting Possession with the Intent to Distribute in Excess of Five Kilograms of Cocaine on or about October 21, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(B)(1)(A) and 18 U.S.C. § 2.

Count 12: Charged Gerald Lakeith Williams and Waymon Emmerson Ervan with Aiding and Abetting Manufacturing in Excess of 50 Grams of Cocaine Base on or about October 22, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2.

Count 13: Charged Johnny Jackson with Possession with the Intent to Distribute and Distributing Cocaine Base on or about October 22, 1993, in violation of 21 U.S.C. § 841(a)(1).

Count 14: Charged Dale Mario Evans with Travelling in Interstate Commerce with the Intent to Distribute the Proceeds of the Distribution of Cocaine and Cocaine Base on or about October 22, 1993, in violation of 18 U.S.C. § 1952(a).

Count 15: Charged Eddie Thomas Braziel with Possession with the Intent to Distribute and Distributing Cocaine Base on or about October 26, 1993, in violation of 21 U.S.C. § 841(a)(1).

Count 16: Charged Gerald Lakeith Williams, Dale Mario Evans, John Doe (a/k/a "C-Low"), and John Doe (a/k/a "J-Bone") with Aiding and Abetting Using a Facility in Interstate Commerce with the Intent to Distribute Cocaine and Cocaine Base on or about October 27, 1993, in violation of 18 U.S.C. §§ 2 and 1952(a).

Count 17: Charged Gerald Lakeith Williams, Dale Mario Evans, Ronald Nunn, and Henry Patterson with Aiding and Abetting Possession with the Intent to Distribute in Excess of Five Kilograms of Cocaine on or about October 28, 1993, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846 and 18 U.S.C. § 2.

Count 18: Charged Gerald Lakeith Williams, Dale Mario Evans, Shirley Jean Williams, and Annie Mariene Mondy with Aiding and Abetting Using a Facility in Interstate Commerce with the Intent to Distribute Cocaine and Cocaine Base on or about November 1, 1993, in violation of 18 U.S.C. §§ 2 and 1952(a).

Count 19: Charged Gerald Lakeith Williams and Waymon Emmerson Ervan with Aiding and Abetting the Manufacture in Excess of 50 Grams of Cocaine Base on or about November 1, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. § 2.

Count 20: Charged Jimmy Corey with Maintaining a Place for the Manufacture of Cocaine Base on or about November 1, 1993, in violation of 21 U.S.C. § 856.

Count 21: Charged Gerald Lakeith Williams and Sid Strickland-Langums with Aiding and Abetting the Distribution of Cocaine Base on or about November 1, 1993, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

Count 22: Charged Mark Kevin Webster and Anthony Conrad Webster with Aiding and Abetting the Distribution of Cocaine on or about November 4, 1993, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

Count 23: Charged Gerald Lakeith Williams, Waymon Emmerson Ervan, Sid Strickland-Langums, and Tony Speank with Aiding and Abetting the Manufacture and Possession with the Intent to Distribute Cocaine and Cocaine Base on or about November 4, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) and 18 U.S.C. § 2.

Count 24: Charged Anthony Conrad Webster, Mark Kevin Webster, Gerald Lakeith Williams, Keith Dwane Dawson, Raymond Shaundale Howard, and Sonia Alissa Alcaraz with Aiding and Abetting Using a Facility in Interstate Commerce with the Intent to Distribute the Proceeds from the Distribution of Cocaine and Cocaine Base on or about November 8, 1993, in violation of 18 U.S.C. §§ 2 and 1952(a).

Count 25: Charged Anthony Conrad Webster and Sonia Alissa Alcaraz with Aiding and Abetting Possession with the Intent to Distribute Cocaine on or about November 9, 1993, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

Count 26: Charged Sonia Alissa Alcaraz with Maintaining a Place for Storing and Distributing Cocaine on or about November 9, 1993, in violation of 21 U.S.C. § 856.

Count 27: Charged Annie Mariene Mondy with Possession with the Intent to Distribute Cocaine on or about November 9, 1993, in violation of 21 U.S.C. § 841(a)(1).

Count 28: Charged Annie Mariene Mondy with Maintaining a Place for the Storing and Distribution of Cocaine on or about November 9, 1993, in violation of 21 U.S.C. § 856.

Count 29: Charged Tony Speank with Possession with the Intent to Distribute Cocaine Base on or about

November 9, 1993, in violation of 21 U.S.C. § 841(a)(1).

Count 30: Charged Tony Speank with Using and Carrying a Firearm, Namely, a 9 Millimeter Glock Semiautomatic Pistol, During and in Relation to a Drug Trafficking Crime on or about November 9, 1993, in violation of 18 U.S.C. § 924(c).

Count 31: Charged Glover Derand Smith with Possession with the Intent to Distribute in Excess of Five Grams of Cocaine Base on or about November 9, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B).

Count 32: Charged Donald Orlando Howard with Possession with the Intent to Distribute in Excess of Five Grams of Cocaine Base on or about November 9, 1993, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B).

Count 33: Charged Gerald Lakeith Williams and Shirley Jean Williams with Conspiracy to Conduct and Attempt to Conduct Financial Transactions Affecting Interstate Commerce Knowing that the Property Involved in the Financial Transactions Represented the Proceeds of Unlawful Activities and Knowing that the Transactions Were Designed to Conceal the Nature of the Proceeds from on or about March 30, 1993, until on or about November 9, 1993, in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

Count 34: Charged all defendants with Aiding and Abetting Using Communication Facilities for the Commission of Felonies Under the Controlled Substances Act from on or about October 13, 1993, until on or about November 16, 1993, in violation of 21 U.S.C. § 843(b) and 18 U.S.C. § 2.

2. On December 12, 1994, John Doe (True Name: Carlos Vignali, Jr.) appeared before U.S. District Judge David S. Doty when a jury returned guilty verdicts to Counts 1, 16, and 34 of the Superseding Indictment. The defendant was found not guilty to Count 10 of the Superseding Indictment.

Related Cases

3. On June 8, 1994, a one-count Indictment was filed in the District of Minnesota charging Andre Maddox with Conspiracy to Possess with the Intent to Distribute and Distribute Five Kilograms or More of Cocaine from about the summer of 1993 to on or about November 9, 1993, in violation of 21 U.S.C. § 846.

4. On July 12, 1994, Andre Maddox appeared before U. S. District Judge David S. Doty and entered a plea of guilty to the one-count Indictment.

The Offense Conduct

5. The following information was obtained by reviewing materials regarding the offense prepared by the Minneapolis Police Department and the Drug Enforcement Administration (DEA).

6. The following is a summary of a cocaine distribution network in Minneapolis, Minnesota. The cocaine was obtained by sources in California such as Melvin Campbell, Bernard Rutherford, Dale Evans, and Andre Maddox. Some of the cocaine that came from California was obtained through Carlos Vignali and Jonathan Gray. Other sources were Keith Dawson in Las Vegas, Nevada, and Tony Webster in Minneapolis. The cocaine was distributed in Minneapolis through a network of people. Gerald Williams was the main distributor. He had a number of individuals who performed different duties within the organization. Gerald Williams' mother, Shirley Williams, assisted by finding sources of cocaine through her old criminal contacts and by making arrangements for deliveries of cocaine. Gerald Williams' girlfriend, Maxine Mackrell, provided residences from which Gerald Williams operated. Annie Mondy, Jimmy Corey, and Sonia Alcaraz provided other residences where the cocaine was delivered, stored, or sold. Several individuals were involved in the distribution of the cocaine, including Gornell Williams (Gerald Williams' brother), Sid Strickland, James Nunn, Tony Speank (true name Speight), Glover Smith, Ronald Nunn, Raymond Howard, Donald Howard, Johnny Jackson, and Eddie Braziel. Not all of the individuals listed received cocaine directly from Gerald Williams; some were indirectly involved with him. Robert Leake was involved in attempting to distribute cocaine with Gornell Williams that was from Melvin Campbell. Henry Patterson attempted to purchase some cocaine from Gerald Williams; however, the transactions never took place. Todd Hopson was introduced to Dale Evans by Ronald Nunn and began buying cocaine from Evans without the knowledge of Gerald Williams. Waymon Ervan converted the cocaine to cocaine base for Gerald Williams. Sylvester Cage held a position similar to that of a bodyguard or enforcer for Gerald Williams.

7. Melvin Campbell was one of the historical sources of cocaine to the Williams' family and their associates. He lived in the Los Angeles, California, area. He had other individuals courier the cocaine from California to Minnesota. Campbell also sent the cocaine through the mail. After the cocaine was in Minnesota and distributed, the money for the cocaine was sent back to Campbell in California through the mail or Western Union or it was carried by couriers. Melvin Campbell

used the telephone to make arrangements with Shirley Williams regarding the distribution of cocaine.

8. Sometimes Melvin Campbell couriered his money himself on planes. He was stopped in 1985 in the Atlanta airport and again in 1991 in the Dallas/Fort Worth airport with large quantities of money.

9. Shirley Williams testified that she got into the drug business in the 1980s. She received cocaine from a number of suppliers over the years including Mark Webster, Melvin Campbell, and others. In the 1980s, she had a number of crack houses in Minnesota where she sold these drugs. She received large quantities of drugs from Melvin Campbell, including kilograms of cocaine.

10. In the 1980s, Campbell transported the cocaine to Minnesota by having individuals strap cocaine to their body and fly from California to Minnesota. Campbell usually accompanied the person on the same plane. Once in Minnesota, Campbell and the courier went to Shirley Williams' home to deliver the cocaine. Campbell also cooked the cocaine powder into crack cocaine at Williams' home in Minneapolis.

11. In March 1988, Campbell was arrested in Minneapolis with one of Shirley Williams' brothers. Campbell was in possession of cocaine and had a gun in the car. Shortly after his arrest, Campbell agreed to cooperate with police to set up Shirley Williams. Campbell, working under the direction of the Minneapolis Police Department, sold Shirley Williams approximately one pound of cocaine. Campbell and a Minneapolis police officer delivered the pound of cocaine to Shirley Williams and she was arrested. After her arrest, Shirley Williams and Melvin Campbell had a falling out and did not deal with each other in the drug business for a while.

12. Shirley Williams testified that she and Melvin Campbell started doing business again around 1991. At that time, Shirley Williams introduced some of Gerald Williams' friends to Melvin Campbell. They flew to Los Angeles with Shirley so they could meet Melvin Campbell and start purchasing drugs from him. The understanding was that Shirley Williams would get $1,000 for every kilogram that Campbell sold to them. Some of that cocaine was mailed to Shirley Williams' brother's store in north Minneapolis.

13. Gerald Williams testified that he started selling drugs when he was a teenager. He stated he met Melvin Campbell in the mid-1980s through another individual. Later, Gerald Williams saw Campbell deliver drugs to Shirley Williams at their home.

14. In 1989, Gerald Williams' cousin in California introduced him to Bernard Rutherford. Williams began to obtain his cocaine

from Bernard Rutherford. Rutherford usually sent the cocaine through the mail.

15. On February 11, 1991, Bernard Rutherford and another individual were stopped by law enforcement in Utah. The officer searched the rental car they were driving and found $72,614 in U.S. currency taped to the car.

16. In September 1991, Gerald Williams and a friend made plans to fly to California to purchase cocaine from Melvin Campbell. They were stopped in the Phoenix airport and $3,000 was seized from them. They continued on to Los Angeles where they met with Melvin Campbell and made arrangements to buy cocaine. For the next several months, both Bernard Rutherford and Melvin Campbell supplied cocaine to Gerald Williams. Melvin Campbell sent the cocaine through the mail. At that time, Melvin Campbell charged $4,000 to $4,500 for a quarter-kilogram of cocaine and $9,000 for a half-kilogram of cocaine.

17. In January 1992, an individual was arrested in Minneapolis for possessing cocaine base and possessing a firearm. This individual (CI-1) agreed to cooperate with law enforcement officials at the time of his/her arrest. CI-1 proceeded to provide information on the cocaine and cocaine distribution of Gerald Williams in the Minneapolis area. CI-1 indicated that he/she purchased large quantities of cocaine from Gerald Williams between 1989 and 1992. On January 22, 1992, Gerald Williams called CI-1, said that he had received three kilograms of cocaine, and told CI-1 to come to Gerald Williams' apartment if he/she wanted some of the cocaine.

18. Based on the above information, officers obtained a search warrant for Gerald Williams' apartment at 2417 Garfield Avenue South, #301, Minneapolis, Minnesota. Maxine Mackrell, Gerald Williams' girlfriend, rented the apartment under the name Naomi Taylor. She listed a prior address on the application as 3289 Hillridge Drive, Eagan, Minnesota. That address was Shirley Williams' residence. The rental application also listed Naomi Taylor's mother as Linda Mackrell, who was Maxine Mackrell's mother.

19. During the search of the apartment on Garfield Avenue officers found the following: approximately 75 grams of cocaine base; scales; packaging materials; a Tech Nine semiautomatic pistol with ammunition; documents belonging to Gerald Williams with Melvin Campbell's name; and a Pasadena address. The telephone records from that apartment showed that Williams was calling Campbell. After the search of the apartment, the apartment was abandoned by the occupants. The cocaine seized at this apartment was from another source.

20. In February of 1992, officers received information from another individual that one of Gerald Williams' buyers

purchased more than a quarter-kilogram of cocaine base several times per month from Gerald Williams.

21. In April of 1992, Gornell Williams and Robert Leake were arrested when they tried to pick up a package of cocaine powder that had been mailed to an address in Minneapolis from Melvin Campbell in California. Shirley Williams testified that she made the arrangements for Melvin Campbell to sell this cocaine to Gornell Williams and Robert Leake. Officers stopped their vehicle and saw a gun sticking out from under one of the floor mats. Another individual was in the vehicle with them and she indicated that they were on their way to pick up a package at the post office. Officers then intercepted that package and found eight ounces of cocaine inside.

22. At the time of his arrest, Gornell Williams admitted the gun found in the car was his and that he used it for protection. Williams further admitted that Leake had a sawed-off shotgun that used to be his but they had traded weapons. He indicated he was involved in selling crack cocaine but in much smaller amounts than his brother, Gerald. He stated that he sold amounts of $50 to $100. Leake confirmed the information provided by Gornell Williams.

23. In May 1992, Gerald Williams gave his uncle, Shirley's brother, about $42,000 to deliver to Melvin Campbell in California for the purchase of cocaine. His uncle was stopped at the Las Vegas airport by narcotics officers and the money was seized. When his uncle called Campbell to tell him what happened, Campbell told him to go home. Campbell also told him what types of papers to file with law enforcement to get the money back. Campbell indicated the same thing had happened to him twice before.

24. After that incident, Gerald Williams stopped getting his cocaine from Campbell and started getting his cocaine from Dale Evans, a young man from the Los Angeles area. Gerald Williams met Dale Evans in January 1992 at a restaurant in Minneapolis and saw him again at a friend's house during the summer of 1992. Williams bought a kilogram of crack cocaine from Evans at that time. From that time to the time Williams was arrested, he received most of his cocaine from Dale Evans.

25. In the beginning, Dale Evans sent crack cocaine packaged in basketballs. The crack cocaine was sent to Jimmy Corey's house or Annie Mondy's house for Gerald. Tony Speight testified that he went with Gerald Williams to Annie Mondy's house to pick up packages of cocaine. After picking up the cocaine at Annie Mondy's, Gerald went to Corey's house and divided the package into smaller amounts.

26. In 1992, Jimmy Corey allowed Gerald Williams to store cocaine at Corey's apartment. Williams also distributed cocaine from Corey's apartment. Williams either paid Corey cash or gave him small amounts of drugs for the use of the apartment. Because of the traffic associated with this drug dealing, Corey had problems with his landlord. Later in 1992, Corey moved and would not allow Gerald Williams to use his apartment for the storage or distribution of drugs.

27. In the fall of 1992, Gerald Williams stopped buying crack cocaine from Dale Evans and started buying cocaine powder. Gerald Williams met Waymon Ervan and Ervan began cooking the powder cocaine into crack cocaine for Gerald. Ervan was able to convert one kilogram (approximately 36 ounces) of powder cocaine into approximately 45 ounces of crack cocaine.

28. In November 1992, a confidential informant (CI-2) provided information that he/she had been a narcotics distributor for Gerald Williams in the past. CI-2 indicated to officers that, during 1992, CI-2 sold hundreds of ounces of cocaine for Gerald Williams and had been with Gerald Williams when he purchased large quantities of cocaine. Gerald Williams had quantities of over one kilogram of cocaine mailed from California on a regular basis.

29. In December 1992, Tony Speight met Dale Evans in Minneapolis. At that time, Gerald Williams told Speight that Evans was his cocaine source. In 1993, Speight began going with Gerald Williams when he dropped off cocaine to his customers. Some of those customers were Sid Strickland, Donald Howard, Glover Smith, Johnny Jackson and, later in 1993, Raymond Howard.

30. Early in 1993, Dale Evans reestablished contact with Jonathan Gray, a former boyfriend of Evans' sister. Gray agreed to start supplying kilograms of cocaine to Dale Evans. Evans testified that he met Carlos Vignali through Jonathan Gray. Evans gave Jonathan Gray the nickname "J-Bone" and Carlos Vignali the nickname "C-low". In the summer of 1993, Evans learned that Carlos Vignali was Gray's cocaine source.

31. Dale Evans and Gerald Williams testified that, during 1993, Evans was sending an average of one to two kilograms of cocaine to Minnesota each week. Evans obtained this cocaine from Jonathan Gray and later from Carlos Vignali or Jonathan Gray. During the summer and fall of 1993, Evans called either Carlos Vignali or Jonathan Gray to place orders for the cocaine. During most of 1993, Dale Evans paid for the cocaine he received from Gray and Vignali up front. However, shortly before he was arrested, Evans started receiving the cocaine on a "front."

32. In June 1993, a confidential informant (CI-3) provided information indicating that Gerald Williams was one of the

largest cocaine distributors in the Minneapolis area. CI-3 had seen Gerald Williams with more than three and one-half kilograms of cocaine and more than $40,000 in cash. At that time, Gerald Williams was selling cocaine for $800 per ounce at the rate of three to four kilograms per month. CI-3 also provided information that Donald Howard, Raymond Howard, Sid Strickland, James Nunn, and Shirley Williams were involved in the distribution of cocaine with Gerald Williams.

33. Based on information collected from confidential informants and other sources, officers were able to initiate court-ordered wire taps on various residential and cellular telephones to monitor calls to and from Gerald Williams regarding cocaine distribution. Many of the intercepted conversations involved coded language and had to be interpreted by investigating officers. On October 13 and 26, 1993, agents started monitoring conversations on a cellular telephone subscribed to Gerald Williams, another number associated with Gerald Williams, and a telephone subscribed to Shirley Williams and located at her residence.

34. On October 13, 1993, officers intercepted a call from Gerald Williams to Dale Evans in California. Evans asked Williams, "Did you want to get something?" Then they discussed transportation methods and costs for getting cocaine from California to Minnesota.

35. On October 14, 1993, a call was intercepted from Shirley Williams to Gerald Williams during which they discussed recent contacts with Claude Phillips in Memphis, Tennessee. Shirley and Gerald Williams went to Memphis to obtain cocaine from Claude Phillips; however, the transaction did not take place and their conversation was a discussion of what went wrong with the transaction. Shirley explained to Gerald that the deal did not take place because Claude Phillips "got spooked." Gornell Williams was on the phone with Gerald during part of the conversation during which Gerald explained to Gornell what had happened and why they returned so quickly from Tennessee.

36. On October 15, 1993, agents intercepted a telephone call between Gerald Williams and Henry Patterson. Patterson asked to meet Gerald Williams.

37. On October 20, 1993, Sylvester had a conversation with Gerald Williams. Williams told Cage that he had some work for Cage to do. Gerald told Cage that Maxine Mackrell took $9,000 from him and that Cage should "blast the bitch" and he wanted her car "blown up." Cage indicated that he would do that for Williams. Williams stated that he provided Sylvester Cage with crack cocaine for Cage's use.

38. During a later conversation between Sid Strickland and Gerald Williams, Williams told Strickland that he had the drugs

ready. Strickland indicated that he was trying to get the money together. Williams told Strickland to get the money together as soon as possible. Strickland told Gerald Williams to save the cocaine for him.

39. Ronald Nunn was a friend of Todd Hopson. Nunn testified that he started hanging out with Hopson during the spring of 1993. Initially, Nunn received small quantities of crack cocaine from Hopson. Eventually, Nunn was receiving nine ounces of crack cocaine from Hopson each time Hopson received a shipment from his source in New York. However, Hopson thought his source was charging too much for each kilogram of cocaine and was not able to supply the quantity that Hopson could distribute. Ronald Nunn introduced Hopson to Dale Evans whom he met through Gerald Williams during the summer of 1993. In October 1993, Ronald Nunn and Hopson flew to Los Angeles so Hopson could meet Evans. Hopson bought 45 ounces of crack cocaine from Evans on that trip.

40. Donald Howard possessed a cellular phone in the name of his girlfriend. Several phone calls were made by Gerald Williams to that number between October 17, 1993, and November 1, 1993. On October 17, 1993, a telephone call was intercepted between Gerald Williams and Donald Howard during which they discussed a narcotics transaction.

41. In the summer and fall of 1993, Gerald Williams and Dale Evans had some "business" problems. They lost thousands of dollars that had been sent through the mail to pay for cocaine and they lost several kilograms of cocaine that had been sent to Minnesota.

42. Around October 20, 1993, Dale Evans came to Minnesota to make sure that things went okay. Prior to leaving Los Angeles, Evans made arrangements with Jonathan Gray and Carlos Vignali to have six kilograms of cocaine sent to Todd Hopson's relative at 4646 Penkwe in Eagan, Minnesota.

43. On October 20, 1993, officers intercepted telephone calls made by Dale Evans on Gerald Williams' cellular phone regarding cocaine that had been shipped from California to Minneapolis.

44. On October 20, 1993, agents intercepted a telephone conversation between Gerald Williams and Henry Patterson. Gerald Williams told Patterson that he would give him a call as soon as he "got it."

45. On October 21, 1993, officers conducted surveillance on Dale Evans, Ronald Nunn, and Todd Hopson. Ronald Nunn picked up Evans at Gerald Williams' apartment in Minneapolis. They drove to Todd Hopson's home in Apple Valley, Minnesota, picked him up, and then went to 4646 Penkwe in Eagan. At that residence, they picked up a large parcel and returned with it

to the residence in Apple Valley. Evans, Nunn, and Hopson detected police surveillance and made evasive driving moves.

46. Agents intercepted telephone calls between Dale Evans and Carlos Vignali and Dale Evans and Jonathan Gray in which Evans talked about the police surveillance. Other telephone conversations intercepted during that period of time indicated the package of cocaine had arrived from California. Hopson and Evans discussed how the package was wrapped and made arrangements to meet later in the day to get it.

47. Later in the day, Gerald Williams, Dale Evans, and Tony Speight drove to Apple Valley to meet with Todd Hopson and pick up four kilograms of cocaine. Todd Hopson delivered the cocaine to Tony Speight at the Apple Valley residence. The residence in Apple Valley was rented by Hopson's sister and used by Todd Hopson. The telephone in the residence was subscribed to another sister of Todd Hopson.

48. Gerald Williams distributed three of the four kilograms discussed above to Raymond Howard. The remaining kilogram was converted into cocaine base by Waymon Ervan and sold to Sid Strickland. Gerald Williams and Ervan made arrangements over the telephone for Ervan to cook the cocaine into crack. Tony Speight testified that he brought a scale over to the residence where Ervan cooked the cocaine.

49. Dale Evans returned to California the following day. Prior to returning to California, he mailed the money he collected for the cocaine. In intercepted telephone conversations, Evans told Jonathan Gray and Carlos Vignali that he would meet with them Saturday morning to give them the money.

50. On October 22, 1993, a call between Waymon Ervan and Gerald Williams was intercepted. They discussed Ervan storing multiple ounces of cocaine for Gerald Williams until the following day. That cocaine was kept at Ervan's apartment located at 2023 Portland Avenue South, #3, Minneapolis.

51. On October 22, 1993, agents intercepted a telephone call between Gerald Williams and Johnny Jackson. They discussed Jackson obtaining cocaine from Williams. Later on October 22, 1993, officers conducted surveillance on Gerald Williams and Tony Speight. Williams drove in his Chevy Blazer to Johnny Jackson's residence at 2609 Portland Avenue South in Minneapolis. Jackson came out of this residence to meet with Williams and received cocaine from him at that time.

52. On October 22, 1993, officers executed a search warrant at 2609 Portland Avenue South, #1, in Minneapolis, the home of Johnny Jackson. During the search of this residence, officers found 42 grams of cocaine base and 10 grams of marijuana.

53. On October 22, 1993, agents intercepted a telephone call between Gerald Williams and Henry Patterson. Patterson told Gerald Williams that they were going to hook up that night.

54. On October 23, 1993, Ronald Nunn and Gerald Williams were stopped by police. Nunn and Williams had four ounces of crack cocaine in the car with them. They threw the crack cocaine out of the car before they were stopped. Later, the crack cocaine was retrieved and distributed by Williams and Nunn.

55. On October 25, 1993, agents intercepted a call between Gerald Williams and Henry Patterson. They agreed to "hook up" later.

56. During October 1993, Eddie Braziel telephoned Ronald Nunn's pager. Nunn returned Braziel's page and the two of them discussed Braziel obtaining cocaine from Nunn.

57. On October 26, 1993, agents intercepted a conversation involving Gerald Williams, Dale Evans, and Jonathan Gray. Evans asked if Williams had talked with Ronald Nunn about the package that was going to Ronald Nunn's apartment. Williams said that he had talked to Nunn and that Nunn was "shakey" about the cocaine coming to his home. Evans said that he was presently with Jonathan Gray and Carlos Vignali and that the three of them were "coming to Minnesota on Sunday."

58. On October 26, 1993, calls were intercepted between Gerald Williams and Dale Evans that indicated a multiple-kilogram quantity of cocaine would be shipped from Los Angeles, California, to 6508 Zane Avenue North, Brooklyn Park, Minnesota, the residence of Ronald Nunn. Although Ronald Nunn learned that the package had been sent to his apartment, he did not want to be involved in accepting the package. Instead, Gerald Williams went to the apartment to receive it. Agents obtained a search warrant for the package. It was intercepted by postal inspectors and found to contain six kilograms of cocaine.

59. Agents intercepted a number of telephone conversations between Gerald Williams, Ronald Nunn, Dale Evans, and Carlos Vignali while they were waiting for the cocaine to arrive at Nunn's apartment.

60. On October 26, 1993, agents intercepted a telephone call between Gerald Williams and Glover Smith. Smith asked Williams what was "up with that thing?" Williams replied that he was "waiting on dude."

61. On October 26, 1993, agents intercepted a telephone call between Johnny Jackson and an unidentified male. The male asked Jackson if he had "any candy?" Jackson replied, "Not yet."

62. Between October 27 and 29, 1993, there were several telephone calls between Glover Smith and Gerald Williams. On October 27, 1993, they specifically discussed Glover Smith buying narcotics from Gerald Williams.

63. On October 29, 1993, agents intercepted a call between Gerald Williams and Dale Evans. Evans asked if the cocaine had "arrived yet?" Gerald said that it had not and asked if Dale's source was going to cut them off.

64. On October 29, 1993, agents intercepted a telephone conversation involving Gerald Williams, James Nunn, and Sid Strickland. James Nunn asked Gerald Williams, "So, what's up on the tiz id (cocaine)?" Williams replied that he was still on "higitty hig end" (still on hold) but that he would "get with" James Nunn and Sid Strickland as soon as he found out what was happening.

65. Because the package of cocaine that was shipped to Zane Avenue had been intercepted by law enforcement, Glover Smith, John Jackson, Henry Patterson, James Nunn, and Sid Strickland did not receive the cocaine they talked about in the telephone conversations.

66. On October 31, 1993, agents intercepted a call between Gerald Williams, Dale Evans, and Carlos Vignali. In response to Evans' question, "Love never got there?", Gerald Williams replied "no." Evans indicated that he was in the car with Vignali "trying to figure out what we're going to do." Evans stated that they had called the post office to see if the package had arrived. Vignali then got on the telephone and said, "This is the other end," and told Gerald to send somebody into the post office to find out about the package. Vignali then said, "We sent that right down that day," and then told Gerald to get on "good horns" (public telephones).

67. The records from Carlos Vignali's cellular telephone correspond to some of these intercepted calls. Those records also show a call from Vignali's cellular telephone to Todd Hopson's telephone during this time.

68. In late October, Hopson flew to Los Angeles to purchase kilograms of cocaine from Dale Evans. Dale Evans testified that he and Hopson met Carlos Vignali at a restaurant in Los Angeles. Vignali agreed to sell Hopson three kilograms of cocaine. Hopson, Evans, and a friend of Evans followed Vignali to an apartment in the east part of Los Angeles. Hopson's money was given to Vignali and Vignali had another person bring out three kilograms of cocaine. Hopson mailed that cocaine to Minnesota himself. Ronald Nunn testified that Hopson cooked those three kilograms of powder cocaine into crack cocaine. Ronald Nunn received nine ounces of crack cocaine from that shipment.

69. On October 31, 1993, Evans and Williams talked again. Evans told Williams that they would no longer be "fronted" drugs. Several hours later, Gerald Williams called Dale Evans and they agreed that Evans would send one kilogram of cocaine to Annie Mondy's house.

70. On October 31, 1993, Shirley Williams spoke to Annie Mondy and asked her to go to work late on November 2, 1993. Shirley Williams also verified Annie Mondy's zip code during the phone conversation.

71. On November 2, 1993, postal inspectors intercepted a package addressed to Annie Mondy that contained one kilogram of cocaine. Dale Evans sent the package and his fingerprint was found on the kilogram wrapper.

72. On November 1, 1993, Tony Webster distributed one kilogram of cocaine to Gerald Williams. Waymon Ervan cooked that cocaine into crack cocaine. In one intercepted telephone conversation, Ervan complained to Gerald Williams that the cocaine "crumbled up." A short time later, Gerald Williams telephoned Ervan and said that he was coming over with the "ruler" (scale). A short time later, Sid Strickland called Gerald Williams and asked, "What you want me to do?" Williams replied that he was "fixing to go biz-aking right nizow" and that he was going to "throw [Strickland] a whole extra one."

73. On November 1, 1993, Gerald Williams was observed going to 2535 Clinton Avenue South in Minneapolis, the residence of Jimmy Corey. Agents monitored a telephone call in which Williams told Sid Strickland that it was "2535-outside." He met with Sid Strickland at that address and provided him with one kilogram of crack cocaine.

74. On November 4, 1993, Tony Webster distributed one kilogram of cocaine to Gerald Williams.

75. Andre Maddox supplied the November 1 and 4, 1993, cocaine to Tony Webster. In the summer of 1993, Tony Webster began purchasing cocaine from Andre Maddox. Maddox initially used female couriers to transport the cocaine from Los Angeles, California, to Minnesota. Earlier in the summer of 1993, Maddox sent a kilogram of cocaine to Mark Webster's house. A courier carried this kilogram of cocaine on a Northwest Airlines flight.

76. Andre Maddox later shipped kilograms of cocaine to Tony Webster via Federal Express. Tony Webster and Sonia Alcaraz checked into a Minneapolis area hotel in order to receive the packages of cocaine. Tony Webster supplied Maddox with the hotel address and Maddox shipped the packages by next day air delivery to the hotel. After receiving the packages of cocaine, Tony Webster shipped money back to Maddox via Federal

Express. Agents were able to corroborate approximately five shipments of cocaine from Maddox to Tony Webster through area hotel records.

77. Agents intercepted a telephone conversation between Gerald Williams and Waymon Ervan in which they agreed to meet at 3538 Newton Avenue North in Minneapolis to cook the cocaine into crack cocaine.

78. On November 4, 1993, a call was intercepted during which Gerald Williams arranged for Tony Speight to bring a scale to 3538 Newton Avenue North in Minneapolis. Speight was then observed going to 3538 Newton Avenue North and meeting with Gerald Williams. At the residence, they cooked the cocaine from Tony Webster into cocaine base. One kilogram of cocaine base was sold to Sid Strickland. Tony Speight testified that he received several ounces of cocaine from each of Gerald's shipments from Tony Webster. Speight then sold this as crack cocaine.

79. On November 4, 1993, a call was intercepted from Gerald Williams to Mark Webster. They discussed the quality of some cocaine and Gerald Williams indicated that he was cooking it up at that time.

80. On November 4, 1993, agents executed a search warrant at 3538 Newton Avenue North in Minneapolis after Gerald Williams had left the residence. They recovered pans that had been used to cook the powder cocaine into crack. The pans contained traces of cocaine.

81. On November 5, 1993, a telephone call was intercepted from Mark Webster on Gerald Williams' phone to a third party. He stated that he was "half out right now" and "the town is dry."

82. On November 5, 1993, Gerald Williams and Tony Webster went to Las Vegas. Upon arriving in Las Vegas, Tony Webster spoke to Keith Dawson about getting multiple kilograms of cocaine and they made arrangements for Dawson to obtain multiple kilograms of cocaine for Tony Webster. Dawson was going to charge Tony Webster about $18,000 per kilogram of cocaine. Tony Webster was going to charge Gerald Williams about $22,000 or $23,000 per kilogram of cocaine.

83. On November 7, 1993, Gerald Williams and Tony Webster returned from Las Vegas to Minneapolis. On November 8, 1993, they gathered the money needed for the transaction. Raymond Howard provided $69,000 to Gerald Williams. A small portion of that money was from Raymond Howard and the rest was from another individual but was delivered by Raymond Howard to Gerald Williams. Gerald Williams then gave Tony Webster more than $90,000. Tony Webster packaged the money into a crockpot and took it to the Federal Express office by the airport. The

money for the transaction was to be sent by Federal Express to Keith Dawson in Las Vegas. Agents intercepted the package containing the money and obtained a search warrant for the package. Inside the package officers found $87,590. The receipt for that package was found in the residence of Tony Webster and Sonia Alcaraz during a search on November 9, 1993.

84. Between October 15, 1993, and November 5, 1993, there were approximately 25 telephone calls made from Gerald Williams to Mark Webster. Mark Webster arranged for the rental car Shirley Williams took to Tennessee to meet with Claude Phillips to try to obtain cocaine.

85. On November 9, 1993, search warrants were executed on several residences of individuals involved in the conspiracy.

86. A search warrant was issued for the residence of Gerald Williams at 1400 Laurel, Apartment 1107, Minneapolis, Minnesota. Items seized during the search included: 25.3 grams of marijuana; $13,806 in cash; and other miscellaneous items.

87. A search warrant was executed on the home and vehicles of Dale Evans at 1907 Isabel Street, Los Angeles, California. Found at the residence were the following items: an AK-47 assault rifle and ammunition; a Desert Eagle pistol and ammunition; a Smith and Wesson 9 millimeter pistol and loaded magazine; a bag containing marijuana; pagers; addresses for Todd Hopson and Ronald Nunn; pictures of Evans, Nunn, and Hopson in California target shooting; and other miscellaneous items.

88. A search warrant was executed at 4646 Penkwe Way, Eagan, Minnesota, the address where Dale Evans, Todd Hopson, and Ronald Nunn went on October 21, 1993, to pick up six kilograms of cocaine. The residence belonged to Todd Hopson's sister. Inside this residence officers found 48 grams of crack cocaine.

89. Officers executed a search warrant for 7632 157th Avenue, Apartment 101, Apple Valley, Minnesota. Yulanda Rolack was the occupant of the apartment; however, she provided information that Todd Hopson was the father of her children and had belongings at the apartment because he resided there sometimes. Officers found the following: a 9 millimeter Luger and ammunition; approximately $70,000 in cash in a safe; some Tupperware with traces of cocaine; a pager; and a handwritten note with Dale Evans' California number on it.

90. A search warrant was executed at the residence of Shirley and Gornell Williams at 12208 17th Avenue South, Townhouse C, Burnsville, Minnesota. During the search, officers found: an Olympic Arms Model CAR-AR 223 Cal Rifle; a Ruger Ranch Rifle; two magazines loaded with ammunition; a partial box of

ammunition; and documents and papers belonging to Shirley and Gornell Williams.

91. During a search of Annie Mondy's residence at 2929 30th Avenue South, Minneapolis, Minnesota, officers found: 397.7 grams of cocaine wrapped in tape; a Colt .22 caliber pistol; approximately $21,000 in cash; two scales; two pagers; drug paraphernalia; and other miscellaneous items.

92. Another search warrant was executed at 2023 Portland Avenue South, Apartment 3, Minneapolis, Minnesota, the home of Waymon Ervan. During the execution of that search warrant, officers confiscated: a wrapper with traces of cocaine on it; a pan that was used to cook crack cocaine; a pager; and other miscellaneous items.

93. A search of Tony Speight's residence at 3026 13th Avenue South, Apartment 5, Minneapolis, Minnesota, resulted in officers finding: 59 grams of crack cocaine; a 9 millimeter Glock 19 automatic pistol; a magazine loaded with 9 millimeter Black Talon ammunition; a .38 caliber pistol and five rounds of ammunition; other boxes of ammunition; $747 in cash; pagers; and other miscellaneous items.

94. Officers conducted a search of Sid Strickland's residence at 4267 46th Avenue North, Apartment 217, Robbinsdale, Minnesota. During the search, officers found: a loaded .45 caliber handgun; $13,750 in cash; a cellular telephone; a pager; photographs of Strickland and other co-conspirators; and other miscellaneous items.

95. Officers executed a search warrant at the residence of Sid Strickland's family at 922 Rawlins Circle, Minneapolis. Found in the home were: a Winchester shotgun with two shells in the chamber and the safety switch off; numerous shotgun and rifle shells; two .25 caliber semiautomatic pistol ammunition clips; and $6,310 in cash. Agents recovered drug notes indicating that James Nunn and others owed Sid Strickland money for cocaine.

96. A search warrant was executed at the home of Tony Webster and Sonia Alcaraz at 401 First Street South, Minneapolis. This apartment was rented in Sonia Alcaraz's name. However, Tony Webster gave her the money to pay the rent. Items found at that residence included: 152 grams of cocaine powder; 29.8 grams of marijuana; approximately $40,000 in cash; an electronic scale; pagers; receipts for Federal Express regarding the shipment of money in the crockpot; an electronic telephone book containing the name and telephone numbers for Andre Maddox. During the morning of November 9, 1993, Tony Webster's pager was activated approximately seven times by telephone numbers belonging to Maddox.

97. A search of the residence of Mark Webster at 4609 15th Avenue South, Minneapolis, resulted in officers locating the following: approximately $20,000 in cash; a portable scale with cocaine traces; a cellular telephone; a pager; miscellaneous jewelry; and a photograph of Andre Maddox. In a vehicle at that residence, officers found a traffic violation ticket issued to Gerald Williams on October 28, 1993, and photographs of Gerald Williams and other codefendants. The vehicle was registered to Shirley Williams.

98. Donald Howard resided at 1805 New York Avenue North, Minneapolis. A search warrant was executed at that residence and officers seized the following items: 49 grams of marijuana; 18 grams of cocaine base; $2,000 cash; a box of Winchester 25 auto cartridges; and an electronic scale.

99. A search of Glover Smith's residence at 2316 Emerson Avenue North, Minneapolis, resulted in officers seizing 49 grams of cocaine base, and a photograph of Glover Smith, Gerald Williams, Tony Speight, Dale Evans, and Donald Gardner taken in California.

100. On November 16, 1993, a CI made arrangements to purchase crack cocaine from Johnny Jackson. The CI met Jackson in the parking lot of a grocery store where Jackson sold the CI $180 worth of crack cocaine. Officers then arrested Jackson and found him in possession of the buy money given to the CI to purchase the cocaine.

101. Todd Hopson was arrested on April 4, 1994, at 55 West 96th Street, Apartment 1F, Bloomington, Minnesota. When he was arrested, he identified himself as "Deon Jackson." Officers found the following items during the search of that apartment: a M-11 9 millimeter gun; five 30-round magazines and a flash suppressor; $1,020 in cash; and approximately one-quarter ounce of crack cocaine.

102. Carlos Vignali was arrested on May 6, 1994. Vignali said that he knew Jonathan Gray but had not seen him for about one year. He said that Gray had introduced Vignali to Dale Evans, who was possibly interested in buying Vignali's townhome. Vignali also said that he had never been called "C-low" by anyone.

103. Jonathan Gray was arrested on June 30, 1994, as he attempted to burglarize a truck trailer containing merchandise. Gray told the arresting officers that his name was "Shawn Harris."

Victim Impact

104. None.

Adjustment for Obstruction of Justice

105. The Government advised the defendant committed perjury at trial and should receive an enhancement pursuant to §3C1.1.

Adjustment for Acceptance of Responsibility

106. Upon advice of counsel, the defendant did not provide a statement regarding his involvement in this offense. Because the defendant did not provide a statement, an assessment for a reduction pursuant to 3E1.1, Acceptance of Responsibility, could not be made.

Offense Level Computations	Level
107. The Guideline Manual incorporating guideline amendments effective November 1, 1994, was used to determine the defendant's offense level.	
108. The three counts of conviction in this case are grouped under §3D1.2(b) because they involved the same victim and are connected by a common criminal objective. The guideline for a violation of 21 U.S.C. § 841 is found in §2D1.1. The guideline for a violation of 21 U.S.C. § 843(b) is found in §2D1.6 of the guidelines. The base offense level is the offense level applicable to the underlying drug offense. The guideline for a violation of 18 U.S.C. § 1952(a) is found in §2E1.2 of the guidelines. The base offense level is the offense level applicable to the underlying drug offense. The higher of the three offense levels is used to determine the offense level for the defendant. Therefore, the offense level is found in §2D1.1.	
109. Base Offense Level: The guideline for a violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 is found in §2D1.1 of the guidelines. The amount of cocaine attributable to the defendant is at least 15 kilograms but less than 50 kilograms of cocaine. The base offense level is 34.	34
110. Specific Offense Characteristics: None.	0
111. Victim Related Adjustments: None.	0
112. Adjustment for Role in the Offense: Pursuant to §3B1.1(c), if the defendant was an organizer, leader, manager, or supervisor in any criminal activity, increase by two levels. The defendant supplied Gerald Williams and Todd Hopson with multi-kilograms of cocaine in Minnesota. Therefore, a two-level enhancement is given. Although there was some indication the defendant supplied	

cocaine to other individuals, there is insufficient evidence to warrant a four-level enhancement. +2

113. Adjustment for Obstruction of Justice: The Government advised that the defendant committed perjury during trial. Therefore, a two-level enhancement is given. +2

114. Adjustment for Acceptance of Responsibility: None. 0

115. Total Offense Level: The total offense level as computed under Chapters Two and Three of the guidelines is 38. 38

PART B. DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

116. None.

Adult Convictions

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposition	Guideline/ Points
117.	7/29/89 (age 18)	Fight/ Challenge to a Fight in a Public Place, Los Angeles Municipal Court, Los Angeles, CA (Case No. 89M11098)	10/13/89: $183 fine.	§4A1.2(c)

The defendant was represented by Edward Mizrahi.

According to the West Covina, California, police reports, police officers were dispatched to Carl Juniors parking lot where four individuals were fighting. Two of the individuals were fighting because one spilled ketchup on the other. The defendant and the other individual were trying to break up the fight.

The fine was paid on October 13, 1989.

118.	8/5/89 (age 18)	Vandalism, Los Angeles Municipal Court, Los Angeles, CA (Case No. 89M10992)	9/29/89: Imposition of sentence suspended; 12 months probation.	§4A1.2(c)

The defendant was represented by Edward Mizrahi.

The defendant pled no contest to the above charges on September 29, 1989. He was also ordered to pay restitution and complete 82 hours of community service work.

Records indicated the defendant was spray painting his nickname on the side of a business without the owner's permission. The defendant stated he associated with the 87th Street west side boys in Los Angeles. According to police records, the defendant is an admitted member of the West Covina mob.

Criminal History Computations — Points

119. The total of the criminal history points is one. According to the sentencing table (Chapter 5, Part A), zero to one criminal history points establish a criminal history category of I. 1

Other Criminal Conduct

120. On May 7, 1988, the defendant was referred for Reckless Driving, Los Angeles Juvenile Traffic Court (Case No. F882173). The disposition is unknown as a search of juvenile records revealed no additional information.

121. On July 22, 1990, the defendant was arrested for Inflicting Corporal Injury on Spouse/Cohabitant, Los Angeles Municipal Court (Case No. 90M03903). He was represented by Edward Mizrahi. The case was dismissed on December 17, 1990.

Pending Charges

122. None.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

123. Carlos Anibal Vignali, Jr., age 23, was born on [redacted] in Santa Monica, California. He is the youngest of four children born to Luz and Horacio Vignali. The defendant described a normal childhood. He stated the family is close-knit and has always had the benefit of their mother at home. The defendant's father, Horacio Carlos Vignali, age 49, resides at [redacted] Pacific Palisades, California He is the owner of C and H Auto Body in Los Angeles California. The defendant's mother, Luz (nee Maldonado Vignali, age 49, resides with her husband in Pacific Palisade: and is a homemaker.

124. [redacted]

125. The defendant's mother was interviewed and described her son as a good-hearted, sweet, and caring person. She advised he cares about others. She believed he is slightly immature and is easily influenced by friends and peers. She stated he maintains an excellent relationship with his father. Her husband is sad and upset over the defendant's current legal situation. She stated they have not led normal lives since this has occurred and his legal situation is both an embarrassment and shock to them.

126. The defendant is presently single and has no children. He has always resided in California.

Physical Condition

127. Carlos Vignali is 5 feet 9 inches tall and weighs 200 pounds. He has brown eyes and black hair. He has the name "Gina" tattooed on the left side of his chest. He has no scars. The defendant stated he is healthy and has no history of health problems; however, his mother advised that, when he was younger, he had severe asthma. She stated he currently suffers from hay fever and allergies.

Mental and Emotional Health

128. The defendant denies any history of mental or emotional health problems. This was confirmed through the defendant's mother.

Substance Abuse

129. The defendant reported occasional use of alcohol, indicating his usage consisted of maybe one drink a year. He denied any drug usage. The defendant's mother recalled her son having several drinks at the age of 14 or 15 to impress his friends. However, she has not seen any alcohol abuse and believed he did not use any drugs.

Education and Vocational Skills

130. The defendant entered the Army/Navy Academy High School in Carlsbad, California, on October 2, 1985. His grades were primarily B's and C's. He left school in June 1988 after completing the tenth grade. He stated he quit school because

he wanted to go to work. His mother confirmed that he wanted to quit school to work for his father.

Military Service

131. None.

Employment

132. The defendant advised he is currently an executive producer of a musical group called "Brownside." They have been working on a record for the last two years which will be distributed by Ruthless Records.

133. The defendant also advised he has been working for his father at C and H Auto Body, 1360 South Figueroa, Los Angeles, California. He stated he is a quality controller and earns $2,600 per month.

134. The defendant also recalled working for one month during the summer at a shoe store in Santa Monica, California.

135. The Social Security Administration confirmed employment in 1985, 1988, 1989, 1990, 1991, and 1992 with C and H Auto Body, Incorporated, in Los Angeles, California. They also confirmed the defendant's employment in 1989 with Athletics Foot Stores, Kennesaw, Georgia, with an income of $471.76.

Financial Condition: Ability to Pay

136. The following information was obtained by interviewing the defendant and examining financial records.

137. The defendant listed his only asset as a 1987 Chevrolet Monte Carlo worth $5,000. He reported no debts; however, the CSC Credit Services, Incorporated, reported a secured debt in November 1994 [redacted]

138. Based on the above, it appears the defendant could possibly pay a minimal fine below the guideline range.

Income Tax Information

139. The Internal Revenue Service provided the following regarding the defendant's federal income tax returns.

Year	Adjusted Gross Income
1989	$ 8,586
1990	$21,218
1991	$23,909
1992	$13,909
1993	Not filed

PART D. SENTENCING OPTIONS

Custody

140. Statutory Provisions: On Count 1, the minimum term of imprisonment is ten years and the maximum is life. 21 U.S.C. § 841(b)(1)(A). On Count 16, the maximum term of imprisonment is five years. 18 U.S.C. §§ 2 and 1952(a). On Count 34, the maximum term of imprisonment is four years. 21 U.S.C. § 843(b) and 18 U.S.C. § 2.

141. Guideline Provisions: Based on a total offense level of 38 and a criminal history category of I, the guideline range for imprisonment is 235 to 293 months.

Impact of the Plea Agreement

142. There was a trial by jury in this case and, therefore, no plea agreement.

Supervised Release

143. Statutory Provisions: On Count 1, a term of at least five years supervised release is required. 21 U.S.C. § 841(b)(1)(A). On Count 16, a term of supervised release of not more than three years may be imposed. 18 U.S.C. § 3583(b)(2). On Count 34, the guideline range for a term of supervised release is one year. §5D1.2(b)(3).

144. Guideline Provisions: The guideline range for a term of supervised release is at least three years but not more than five years or the minimum required by statute, whichever is greater. §5D1.2(a).

Probation

145. Statutory Provisions: The defendant is not eligible for probation because the instant offense is a Class A felony. 18 U.S.C. § 3561(a)(1).

146. Guideline Provisions: Because the minimum of the guideline range is greater than six months, the defendant is not eligible for probation. §5B1.1(a)(2).

Fines

147. Statutory Provisions: On Count 1, the maximum fine is $4,000,000. 21 U.S.C. § 841(b)(1)(A). On Counts 16 and 34, the maximum fine is $250,000 per count. 18 U.S.C. § 3571(b)(3).

148. Guideline Provisions: The fine range for the instant offense is from $25,000 to $4,000,000. §§5E1.2(c)(3) and 5E1.2(c)(4).

149. Subject to the defendant's ability to pay, the Court must impose an additional fine that is at least sufficient to pay the cost of any imprisonment, probation, or supervised release ordered. §5E1.2(i). The most recent advisory from the Administrative Office of the U.S. Courts, dated April 30, 1993, suggests that a monthly cost of $1,734.00 be used for imprisonment, a monthly cost of $1,132.00 be used for community confinement, and a monthly cost of $180.90 be used for supervision.

150. A special assessment of $150 is mandatory. 18 U.S.C. § 3013.

Restitution

151. Restitution is not applicable in this case.

Denial Of Federal Benefits

152. Statutory Provisions: Pursuant to 21 U.S.C. § 862(a)(1)(A), upon a first conviction for distribution of a controlled substance, a defendant may be declared ineligible for any or all federal benefits for up to five years.

153. Guideline Provisions: Pursuant to §5F1.6, the Court may deny eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

154. The probation officer has not identified any factors that would warrant a departure from the guideline range.

Respectfully submitted,

Joan L. White
U.S. Probation Officer

APPROVED:
for Glenn Baskfield
Chief U.S. Probation Officer

JLW/ej

AO 245 S (Rev. 4/90) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Fourth Division - District of Minnesota

UNITED STATES OF AMERICA

v. Case Number CR 4-93-166(9)

CARLOS VIGNALI, JR.
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, CARLOS VIGNALI, JR., was represented by Daniel G. Davis and Ronald I. Meshbesher.

The defendant was found guilty on counts 1, 16 and 34 of the superseding indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such counts, involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846	Conspiring to Distribute Cocaine		1
18 USC 1952(b)	Using Facilities in Interstate Commerce With the Intent to Promote A Business Enterprise Involving Narcotics		16
21 USC 843(b)	Illegal Use of Communication Facility to Facilitate the Commission of a Controlled Substance		34

As pronounced on July 17, 1995, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $ 150.00, for counts 1, 16 and 34 of the superseding indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Dated: July 17, 1995

David S. Doty
United States District Judge

[redacted]

A true copy in ____ sheet(s)
of the record in my custody.
CERTIFIED ____, 19 ____
Pamela E. Dosal, Clerk
By ____ Deputy

FILED 7-17-95
FRANCIS E. DOSAL, CLERK

1449

JUDGMENT ENTD
DEPUTY CLERK

EXHIBIT
3

dant: CARLOS VIGNALI, JR.
Number: CR 4-93-166(9)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term 71 months under Count 1, a concurrent sentence of 60 months under Count 18 and a concurrent sentence of 48 ths under Count 34.

he Court makes the following recommendations to the Bureau of Prisons: That the defendant be incarcerated at oc, California.

he defendant is remanded to the custody of the United States Marshal.

RETURN

ave executed this Judgment as follows:

efendant delivered on _____ to _____
_____ with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

ɔant: CARLOS VIGNALI, JR.
ɔ Number: CR 4-93-166(9)

SUPERVISED RELEASE

Jpon release from imprisonment, the defendant shall be on supervised release for a term of 5 years under Count 1; ncurrent term of 3 years under Count 16; and a concurrent term of 1 year under Count 34.

Vhile on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally ess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth w); and shall comply with the following additional conditions:

ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which ne defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of upervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at ne commencement of the term of supervised release.

he defendant shall not own or possess a firearm or destructive device.

he defendant shall, at the direction of the U.S. Probation Office, participate in and complete a program approved .hat office for urinalysis testing and treatment of chemical dependency.

STANDARD CONDITIONS OF SUPERVISION

/hile the defendant is on supervised release pursuant to this Judgment:

he defendant shall not leave the judicial district without the permission of the court or probation officer.
he defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report ithin the first five days of each month.
he defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
he defendant shall support his or her dependents and meet other family responsibilities.
he defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable easons.
he defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
he defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other ontrolled substance, or any paraphernalia related to such substances.
he defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
he defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless anted permission to do so by the probation officer.
he defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband bserved in plain view by the probation officer.
he defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
he defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of e court.
irected by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or onal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with ich notification requirement.

ant: CARLOS VIGNALI, JR.
Number: CR 4-93-166(9)

STATEMENT OF REASONS

he court adopts the factual findings and guideline applicatio[illegible] the presentence report except see attachment.

eline Range Determined by the Court:

Offense Level:	34
nal History Category:	I
sonment Range:	151 months to 188 months
rvised Release Range:	At least 5 years
Range:	$ 250,000 to $ 4,000,000
tution:	$ N/A

he fine is waived or is below the guideline range because of the defendant's inability to pay due to his lack of assets pending incarceration. Defendant will not be ordered to pay the costs of his incarceration or supervised release.

he sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the ng reasons: Defendant's offense level was not adjusted based on his role in the offense, his role as a supplier of e tends to make him more culpable and warrants a sentence in the upper end of the guideline range.

MAR-29-2001 THU 11:18 AM

I. FINDINGS OF FACT

The court adopts the factual statements contained in the PSR as to which there is no objection. Defendant objects to paragraphs 42 and 68 of the PSR.

Paragraph 42 states that Dale Evans made arrangements with Jonathan Gray and defendant to have a package of cocaine sent to Todd Hopson's relative at 4646 Penkwe in Eagan, Minnesota. Evans testified about defendant's participation in the transaction. Defendant contends the testimony of Evans is not reliable and therefore is insufficient to support the finding contained in the PSR. The evidence at trial also included conversations between Evans and defendant which were intercepted by a wiretap. Evans' testimony concerning defendant's involvement in the transaction is corroborated by a series of conversations which occurred on October 20 and 21, 1993. The court finds the testimony of Evans, as corroborated by other evidence, is sufficiently credible to establish that defendant was a knowing and willing participant in the shipment of cocaine to Minnesota on October 20, 1993.

Paragraph 68 states that in late October Hopson traveled to California and Evans arranged for Hopson to purchase 3 kilograms of cocaine from Vignali. The information in paragraph 68 is based on Evans' testimony at trial. There are no taped conversations that correspond with the cocaine deal Evans said he arranged between Hopson and Vignali. The transaction was corroborated by the testimony of Ronald Nunn who, although not present during the actual deal, traveled to California with Hopson and received some of the drugs back in Minnesota. The court finds that the testimony of Evans, as corroborated by Nunn, is sufficiently credible to establish that defendant participated in the drug transaction described in paragraph 68 of the PSR.

It is proper to note that in finding the evidence suffices to show that defendant participated in the transactions described in paragraphs 42 and 68, the court has not yet addressed the amount of cocaine attributable to defendant by way of those transactions.

II. APPLICATION OF GUIDELINES TO FACTS

The court adopts the guideline calculations contained in the PSR as to which there is no objection. A question of guideline application has arisen with respect to the conclusions contained in paragraphs 105, 109 and 112 of the PSR. The court resolves the questions as follows:

1. Quantity of Drugs

Defendant objects to the calculation of the base offense level in paragraph 109 of the PSR. Paragraph 109 holds defendant responsible for conspiring to distribute between 15 and 50 kilograms of cocaine. Based on that quantity of cocaine the base offense level is 34. Defendant argues that the drug calculation contained in the PSR is based on the unreliable and unsupported testimony of Evans. Defendant contends the amount of cocaine attributable to him is between 5 and 15 kilograms and, therefore, his base offense level is 32. The government responds that the evidence is sufficient to hold defendant accountable for the distribution of at least 15 but less than 50 kilograms of cocaine.

Defendant contends that he should not be held accountable for the six kilograms of cocaine involved in the transaction described in Count 10 of the indictment. Defendant claims that the evidence fails to show that he knowingly participated in the transaction and points out that the jury acquitted him on Count 10. It is well established that a verdict of acquittal only demonstrates lack of proof beyond a reasonable doubt and does not necessarily establish innocence of the crime charged. United States v. Olderbak, 961 F.2d 756, 764 (8th Cir. 1992). The facts underlying an acquittal may be considered by the court for sentencing purposes when those facts appear to be sufficiently reliable. Id. The court finds the testimony of Evans to be sufficiently credible to establish that defendant was a knowing and willing participant in the shipment of cocaine to Minnesota on October 20, 1993.

Under the Guidelines, a defendant's base offense level for drug-related crimes is calculated according to the quantity of controlled substance attributable to the defendant. § 2D1.1. The amount of drugs attributable to the defendant is a question of fact committed to the district court. Because the government only seized one shipment of cocaine, the court must approximate the amount of drugs attributable to defendant. The government relies on Evans' testimony to establish the amount of drugs attributable to defendant.

Evans testified that he met Vignali through Jonathan Gray sometime in 1993. Evans said he obtained cocaine from Gray in 1993; Evans believed that Gray obtained the cocaine from Vignali. Evans also said that Vignali may have been the source of two packages of cocaine sent to Minnesota in October 1993. The packages arrived in Minnesota on October 21 and October 28, 1993. The second package was seized by law enforcement authorities and was found to contain 6 kilograms of cocaine. At trial Evans testified that the first package also contained 6 kilograms of cocaine. On at least two other occasions, however, Evans stated the package contained only 4 kilograms of cocaine. Evans also testified that Todd Hopson traveled to California and Evans arranged for Hopson to purchase 3 kilograms of cocaine from Vignali for $70,000. In an interview with federal agents, however, Evans said that Hopson bought 2 kilograms from Vignali for $36,000 to $38,000.

Defense counsel ably illuminated the inconsistent statements made by Evans during a lengthy and thorough cross-examination. The court has already found that, on balance, the testimony of Evans to be sufficiently credible to establish that defendant was a knowing participant in the distribution of cocaine. With respect to the quantity of drugs, however, the testimony of Evans has not been shown to be as reliable. Evans admitted at trial that he had little independent recollection of particular drug transactions and that his memory was refreshed by conversations captured on the wiretap. The conversations, however, provide little corroboration as to the quantity of drugs involved in particular transactions. There are no drug notes or other records to offer any guidance. After reviewing all of the evidence concerning the amount of

cocaine distributed by defendant, the court finds that defendant may properly be held accountable for the distribution of between 5 and 15 kilograms of cocaine. Accordingly, the court concludes that the appropriate base offense level is 32 rather than 34 as stated in paragraph 109 of the PSR.

2. Obstruction of Justice

Defendant objects to paragraph 105 of the PSR which increases his offense level by 2 points for obstruction of justice. Section 3C1.1 of the Guidelines provides for a 2 point increase "[i]f the defendant willfully obstructed or impeded or attempted to obstruct or impede, the administration of justice during the investigation, prosecution, or sentencing of the instant offense." The PSR states that the enhancement was applied because "[t]he government advised the defendant committed perjury at trial." Defendant claims that conclusion fails to support an enhancement under § 3C1.1. While the reason set forth in the PSR is deficient, the court finds that the enhancement was correctly applied in this case.

It is well established that a defendant's sentence may be enhanced if the court finds he committed perjury at trial. It is not sufficient to enhance a sentence simply because a defendant testifies in his own behalf and the jury disbelieves him. Rather, the court itself must find that the defendant committed perjury. In deciding the issue of perjury, the court takes the alleged false testimony in a light most favorable to the defendant. Even under this standard, it is clear that defendant committed perjury.

At trial Vignali acknowledged that he knew Evans and Gray but maintained that he never discussed drug transactions with them. Vignali said Gray approached him about providing money to invest in a business deal with professional basketball players associated with Evans and Vignali agreed on two occasions in October 1993. Vignali denied knowingly participating in any cocaine transactions. Vignali claimed that his statements recorded on the wiretap were designed to get back money he loaned to Evans and Gray.

After reviewing all of the evidence concerning defendant's involvement in the distribution of cocaine and defendant's testimony, the court finds that defendant committed perjury by denying any knowing involvement in the drug conspiracy. In the court's view, defendant gave knowingly false testimony at trial when he testified he was not involved in the distribution of cocaine. The court concludes that paragraph 105 properly applied an enhancement for obstruction of justice based on defendant's perjury at trial.

3. Role in the Offense

Defendant objects to paragraph 112 of the PSR which characterizes him as an "organizer, leader, manager, or supervisor" of the conspiracy charged in the indictment and, pursuant to § 3B1.1(c) of the Guidelines, adds 2 levels to his offense level. The PSR states the enhancement is warranted because defendant "supplied Gerald Williams and Todd Hodson with multi-kilograms of cocaine in Minnesota." The government responds that defendant's offense level was properly increased under § 3B1.1(c) of the Guidelines. In determining whether the defendant deserves an

enhancement under § 3B1.1(c), the court examines the nature of his role in the offense, the exercise of decision making authority, his recruitment of accomplices, the receipt of a larger share of the fruits of the crime, the extent of his involvement in planning or organizing the offense, and the nature and scope of the illegal activity. Application Note 3, § 3B1.1.

The application of § 3B1.1 requires some differentiation in both the relative culpabilities and roles of participants in a crime. To be an organizer, leader, manager, or supervisor, the defendant must have exercised some degree of control over others in the conspiracy or organized others for the purpose of carrying out the crime. Defendant directly participated in criminal activities with Dale Evans, Jonathan Gray, Gerald Williams and Todd Hopson. Defendant did not recruit those persons to the conspiracy and the evidence fails to establish that defendant exercised any control over them. Rather, the evidence suggests that Evans exercised authority over defendant.

The government contends that defendant controlled the amount of cocaine to be shipped, exercised decision making authority over the price and quantity of cocaine and shared a large part of the fruits of the criminal conspiracy. The evidence, however, does not support those contentions. The evidence fails to show that defendant organized or led others involved in the conspiracy. While defendant participated in sending packages of cocaine to Minnesota there is no evidence to suggest that he orchestrated the shipments. There is evidence that defendant may have decided to quit fronting cocaine to Gerald Williams. The court considers the evidence ambiguous, however, as to whether defendant or Evans had the authority to make that decision.

The court finds that the evidence does not support a 2 level enhancement based on the role defendant played in the conspiracy. The evidence fails to establish that defendant exercised control over others in the conspiracy or organized others for the purpose of carrying out the crime. Accordingly, the court concludes that paragraph 112 of the PSR erroneously added 2 levels to defendant's offense level under § 3B1.1(c).

REPORT TO THE PRESIDENT

ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR

CARLOS ANIBAL VIGNALI, JR.

Offense:	Conspiracy to distribute cocaine; using facilities in interstate commerce with intent to promote a business enterprise involving narcotics; illegal use of communication facility to facilitate commission of a controlled substance offense.
Sentence:	175 months' imprisonment; five years' supervised release.
Date:	July 17, 1995.
District:	Minnesota.
Relief sought:	Commutation.

Summary of essential facts:

From the mid-1980's to November 1993, Gerald Williams operated a major powder and crack cocaine distribution organization in the Minneapolis/St. Paul area. Beginning in 1990, Williams' main source of supply was California resident Dale Evans, who nearly [illegible] began obtaining his cocaine from petitioner and another co-conspirator. Law enforcement authorities conducted a six-month wiretapping investigation, which intercepted conversations among petitioner, Evans, Williams, and others, discussing shipments of cocaine to Minnesota. One of those shipments, which contained six kilograms of the [illegible], was intercepted by postal inspectors in October 1993. During that same month, petitioner also sold three kilograms of cocaine to another major Minnesota distributor, Todd Hopson, who cooked the powder into crack for sale.

In December 1993, the government filed a 34-count superseding indictment, charging petitioner and 30 codefendants with various offenses in connection with the trafficking conspiracy. Petitioner was the sole Hispanic defendant; all of the others were African-American.[1] Most pleaded guilty; only petitioner and three others went to trial. The jury convicted petitioner of conspiracy and two substantive counts, while acquitting him of a third substantive count.

---

[1] Petitioner's defense counsel used this fact to argue his client's innocence to the jury, characterizing the case as involving a "black drug dealing network," and emphasizing that petitioner was not black.

EXHIBIT 4

The presentence report recommended that petitioner receive a two-level enhancement for role in the offense, as well as a two-level enhancement for obstruction of justice due to his commission of perjury during his trial testimony which would have resulted in a sentencing range of 235-293 months imprisonment. The sentencing court declined to follow the PSR's recommendation, reducing the range to 151-188 months, but imposed a sentence of 175 months after finding that petitioner's role as a supplier of cocaine base to make him more culpable and warrants a sentence in the upper end of the guideline range.

The Eighth Circuit affirmed petitioner's conviction, rejecting *inter alia* petitioner's claims of improper joinder and "vouching" by the prosecution for the credibility of its witnesses. The appellate court agreed with the district court that "the [was considerable evidence of Vignali's guilt." Petitioner then filed a motion pursuant to 28 U.S.C. 2255, collaterally attacking his conviction on the grounds of ineffective assistance of counsel, which was denied by the district court. The Eighth Circuit refused his request for a certificate of appealability of the court's ruling.

Petitioner has two 1989 convictions, for fighting in a public place, for which he received a $185 fine, and vandalism, for which he received 12 months probation. The conduct on which the latter conviction was based appears to have been associated with his admitted membership in the "West Covina Mob," a Los Angeles gang. He also has a 1988 arrest for reckless driving (disposition unknown) and a 1990 arrest for inflicting corporal injury on a spouse or cohabitant (case dismissed).[2]

Grounds for clemency:

Now 28 years old and projected for release in A[illegible] 2007, petitioner seeks clemency primarily on the grounds of innocence, maintaining that a $25,000 loan to a friend was misconstrued as a drug deal. He argues that he was convicted solely on the basis of "misinterpreted" recorded telephone conversations and the "highly rewarded" testimony of a co-conspirator. He also complains that he had no prior contact with the state of Minnesota and that he was acquainted with only two of his 29 co-defendants. Finally, he contends that the 175-month sentence "for a 21 year old, first time, nonviolent offender with no significant prior record is unwarranted."[3]

Two United States congressmen from California have expressed interest in petitioner's case. Congressman Estaban E. Torres wrote in support of clemency for petitioner on the grounds he had "no prior criminal record" and that the government had failed to prove its case:

---

[2]Petitioner did not disclose these arrests on his commutation petition, although the application form requires such disclosure.

[3]It should be noted that petitioner was 24 years old at sentencing and 22 years old at the time of most of the conduct for which he was convicted.

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Neither drugs nor drug money was found in Carlos's possession. Carlos had simply loaned money to a friend, who happened to be involved in the sale of narcotics. At trial, the evidence offered against Carlos was misinterpreted telephone recordings between Carlos and his friend and the testimony of another alleged co-conspirator, who had negotiated a reduced sentence in exchange for his testimony.

Congressman Xavier Becerra telephoned the Office of the Pardon Attorney in connection with petitioner's application and requested an explanation of clemency procedures.

Official comments:

United States Attorney B. Todd Jones strongly opposes clemency for petitioner, noting that petitioner's persistent claims of innocence are undermined by strength of the evidence presented against him:

> Th[e] testimony [of the cooperating coconspirators] was consistent and independently corroborated by the Title III wiretap interceptions, search warrant evidence and police surveillance. The evidence clearly established that Carlos Vignali, Jr. was a member of the charged drug conspiracy and facilitated the distribution of narcotics in the Twin Cities by supplying Evans, Williams and Hopson with substantial quantities of cocaine from Los Angeles, California.

Mr. Jones noted that the two main cooperating coconspirators, Williams and Evans, received sentences of 180 months and 95 months respectively. He concluded by stating:

> The sentence imposed by Judge Doty reflects the seriousness of the defendant's role in a large scale narcotics conspiracy as the California source of cocaine to Evans, Williams, and Hopson. To my knowledge Vignali has refused to accept personal responsibility for his criminal activities and has never expressed sincere remorse for his conduct. In light of the exacting standards generally applicable in pardon cases, this case does not warrant such a commutation.

Reasons for denial:

In applying for clemency, petitioner has to a large degree merely recycled arguments already rejected by the jury and the courts. He continues to deny his guilt, and his petition contains misleading statements and misstatements of fact. As for his allegation that he has no connection to Minnesota, the jury convicted him of the offense of supplying large quantities of cocaine to distributors in that state. Moreover, his contention that his sentence is excessive fails in light of the sentencing record, which establishes that the district court accorded him leniency in refusing to adopt two enhancements recommended by the presentence report. For all these reasons, I recommend that you deny his petition.

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Respectfully submitted,

Roger C. Adams

Pa[illegible] Attorney

Date: 1/12/01

Need to XC
for Bruce.

Definitely isn't
simply making
a loan –
& do we believe
the gang thing?

USA is actually
against —

maybe we
shd call

& ck the recs we've
been told of

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1000

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STRICT OFFICE
0 NORTH AVENUE 55
)S ANGELES, CA 90042
HONE: (213) 255-7079

California Legislature
ANTONIO R. VILLARAIGOSA
ASSEMBLYMEMBER, FORTY-FIFTH DISTRICT

PUBLIC SAFETY
MEMBER:
APPROPRIATIONS
INSURANCE
LABOR
REVENUE AND TAXATION

May 24, 1996

Pardon Secretary
The White House
Washington, D.C. 20500

Dear Mr. Secretary:

I am writing to ask you to consider the case of Mr. Carlos Vignali, Jr. currently pending before the Eighth Circuit of the U.S. Court of Appeals.

After reviewing Mr. Vignali's case, I am convinced that he has been falsely linked to a drug ring in Minneapolis, MN, and that his conviction is a product of "guilt by association," among other factors. Mr. Vignali's petition to the court also alleges several crucial District Court errors which are pertinent to his case, including exclusion of important evidence, an allegation of jury misconduct and one of witness perjury.

Mr. Vignali has no prior criminal record nor has he previously been suspected of illegal possession or sale of drugs. He is a hard-working young man who has been employed with the family business and is also part owner of a record production company. His military academy schooling adds to his superior resumé.

In the interest of justice I urge you to give Mr. Vignali's case prompt and thorough consideration.

Thank you for your attention.

Very Truly Yours,

ANTONIO R. VILLARAIGOSA
Assemblymember, 45th District

ARV/jb

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EXHIBIT
5

RICHARD ALATORRE
COUNCILMAN
FOURTEENTH DISTRICT

May 28, 1996

Pardon Secretary
The White House
Washington, D. C. 20500

Dear Mr. Secretary:

I am requesting a presidential review and closer examination of the facts surrounding the case of United States of America v. Carlos Vignali, Jr. This case is currently pending before the United States Court of Appeals for the Eighth Circuit.

Mr. Vignali is presently serving a 15 year sentence for his alleged involvement in a conspiracy to sell narcotics along with other individuals with whom he was loosely connected. Prior to his conviction, Mr. Vignali neither had a criminal record nor had been suspected of possessing or selling illegal drugs. Considering these facts, it is difficult for me to understand why Mr. Vignali received such an exorbitant sentence. It has been pointed out that this may have been due to the fact that his case was grouped together with a much larger case involving the sale of drugs. Others contend that it may have been because of his Latino background, which I hope is not the case.

These circumstances notwithstanding, I understand that Mr.Vignali may not have been afforded due process during his trial. I have learned there was potential juror misconduct and witness perjury. Also, because hearsay was improperly admitted during the trial Mr.Vignali consequently suffered from being associated with other people who were found guilty during the trial. For these, as well as other compelling reasons, Mr. Vignali is appealing his case to a higher court.

I believe justice will be served by your careful evaluation of the facts of this case.

Sincerely,

RICHARD ALATORRE

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CITY HALL, 200 N. SPRING STREET, LOS ANGELES, CA 90012 (213) 485-3335

EXHIBIT
6

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FAX: (916) 445-0413

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SUITE 8710
OS ANGELES, CA 90013
(213) 620-2529
FAX: (213) 617-0077

Senate
California Legislature

SENATOR
RICHARD G. POLANCO
TWENTY-SECOND SENATORIAL DISTRICT

APPROPRIATIONS
CRIMINAL PROCEDURE
FINANCE, INVESTMENT AND
INTERNATIONAL TRADE
HEALTH AND HUMAN SERVICES
TRANSPORTATION

CHAIR:
DEMOCRATIC CAUCUS
ELECTIONS & REAPPORTIONMENT

July 22, 1996

Pardon Secretary
The White House
Washington D.C. 20500

Dear Mr. Secretary:

I have reviewed the facts in the case of Carlos Vignali Jr., and in the interest of justice I forward this letter.

This matter is being appealed in the U.S. Eighth Circuit Court of Appeals. The appeal is based on the issues of juror misconduct, improper jury instruction, witness perjury, improper admission of hearsay evidence, improper exclusion of exculpatory evidence.

Mr. Vignali's conviction was based on the allegation that he conspired with others to sell and traffic drugs. His case was not individually tried before a jury of his peers. Consequently, Mr. Vignali a 24 year old with no prior criminal record received a 15 year sentence.

In the interest of justice I am asking that you carefully review Mr. Vignali's case and give this matter your every consideration. I believe justice will be served by your evaluation of the facts of this case. Please feel free to contact me should you have any questions.

Thank you for your consideration.

Sincerely,

Richard G. Polanco
State Senator, 22nd District

EXHIBIT
7

COPY

Archdiocese of Los Angeles
Office of the Archbishop (213) 251-3288
1531 West Ninth Street
Los Angeles California 90015-1194

July 26, 1996

Pardon Secretary
The White House
Washington, DC 20500

Dear Mr. Secretary:

I am writing in reference to the case of **The United States of America v. Carlos VIGNALI, Jr.**

Let me state at the outset that I have never met Mr. Carlos Vignali, Jr., personally, nor do I know his family personally.

However, I am well aware of the outstanding contributions which the Vignali Family have made to all of Southern California over the years, and the great care and concern which they have shown the community through their active involvement in so many projects to better our greater community.

In addition, I know very well--and trust greatly--several of our local Legislators who have already written to you. In particular, I have great respect for the judgement and the leadership of **Congressman Esteban E. Torres** [34th District, California], **State Senator Richard G. Polanco** [22nd Senatorial District, California], **Assemblymember Antonio R. Villaraigosa** [45th Assembly District, California], and **Councilmember Richard Alatorre** [14th District, City of Los Angeles, California].

These outstanding Legislators have all reviewed this case very carefully, and each one has concluded that the facts in this case merit a full evaluation and review of the process of the case, the special circumstances involved, and the major sentence imposed upon Carlos Vignali, Jr.

Based upon the recommendation of the four outstanding Legislators noted above, I now wish to add my voice recommending that all of the process, the law, and the facts in this case be reviewed fully to determine if justice has been achieved in the case of Mr. Carlos Vignali, Jr.

EXHIBIT 8

I am grateful to you for taking the time to review this case and to make certain that complete and adequate justice has been rendered.

With kindest personal regards, I am

Sincerely yours,

+ Roger Cardinal Mahony

His Eminence
Cardinal Roger Mahony
Archbishop of Los Angeles

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MONTEBELLO, EAST LOS ANGELES
(PHONE ONLY)
(213) 726-1904

Congress of the United States
House of Representatives
Washington, DC 20515-0534

ESTEBAN E. TORRES
34TH DISTRICT, CALIFORNIA

July 3, 1996

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Honorable Janet Reno
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Ms. Reno:

Recently, I had the opportunity to review the case of Carlos Vignali, Jr., a young man who has been convicted of drug possession and the illegal sale of drug narcotics. Currently Mr. Vignali's conviction is on appeal before the United States Court of Appeals for the Eighth Circuit.

According to information I have reviewed, Mr. Vignali's conviction was based on allegations that he conspired with other individuals involved in the selling and trafficking drugs. Because of this alleged involvement, Mr. Vignali received a 15 year sentence. His case was not individually tried before a jury of his peers.

Mr. Vignali is a 24 year old with no prior criminal record and he has never been suspected of selling or trafficking narcotics. He is a hard working individual who has been integral member of his family's successful business and is a part owner of a record production company.

His appeal before the Eighth Circuit is based on the following reasons: juror misconduct; improper jury instructions; witness perjury; improper admission of hearsay evidence; improper exclusion of exculpatory evidence.

I am asking that you carefully review Mr. Vignali's case and give this matter your every consideration. If you have any questions, please feel free to contact me. Thank you for your kind attention and I look forward to hearing from you.

Sincerely,

ESTEBAN E. TORRES
Member of Congress

EXHIBIT
9

PETITION FOR COMMUTATION OF SENTENCE

Print or type legibly

Relief sought: *(check one)*
☒ Reduction of Prison Sentence Only ☐ Reduction of Prison Sentence and Remission of Fine
☐ Remission of Fine Only ☐ Other _____

TO THE PRESIDENT OF THE UNITED STATES:

PETITIONER, CARLOS ANIBAL VIGNALI, a Federal prisoner,
(First Name) (Middle) (Last)
Reg. No. [redacted], confined in the Federal Institution at FCI Safford, Arizona,
in seeking a commutation of sentence, states that he was born on May 30, 1971,
and has Social Security No. [redacted]. (If not a United States citizen, indicate country of
citizenship: _____)

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PETITIONER was convicted on a plea of not guilty in the United States District Court
(guilty, not guilty, nolo contendere)
for the _____ District of Minnesota of the crime of: Count One: Conspiring
(Describe the offense(s) of which you were convicted, provide citation of statute(s) violated, if known.)
to manufacture, possess, and distribute cocaine (21 U.S.C. § 846);
Count 16: aiding and abetting the use of a facility in interstate
commerce with intent to distribute cocaine (18 U.S.C. §§ 2, 2952(a);
Count 34: aiding and abetting the use of communications facilities
for the commission of felonies (18 U.S.C. §§ 2, 843(b)). Acquitted on
involving the following circumstances: *(Describe concisely what you did, including your role in the offense.)* Count 18:
Vignali loaned $25,000 to a friend, which were interpreted through
slang taped telephone conversations to involve purchases of drugs.
No drugs were seized from Vignali, and he was convicted solely on
the testimony of a codefendant who received leniency. The taped
conversations did not mention either drugs or money but were in-
terpreted to have those subjects. Vignali was tried in Minnesota
where he had never been or had any significant contact with.

and was sentenced on July 17, 19 95, to imprisonment for 175 months
(length of sentence)
and/or to pay a (☐ fine ☐ restitution) of $ _____ and/or to supervised release or special
(check only - do not include special assessment)
parole for 5 years and/or to probation for _____.
(length of supervision) *(length of sentence)*
My (☐ fine ☐ restitution) (☐ has ☐ has not) been paid: the balance owed is $_____.

PETITIONER began the service of his sentence on December 17 1994. He will be released
from confinement on August 21, 2007. If eligible for parole, he (☐ was ☐ will be) scheduled
on _____, _____, and his application for parole was (☐ granted ☐ denied).

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EXHIBIT 10

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on October 1, 1996. A petition for a writ of certiorari (☐ was ☒ was not) sought from the Supreme Court, and (☐ granted ☐ denied) on _____, 19___. Petitioner (☒ did ☐ did not) challenge his conviction or sentence under 28 U.S.C. §2255 (habeas corpus). (Provide citations to court opinions, if known: United States v. Williams, 97 F.3d 240 (8th Cir.1996)

In this paragraph, list every arrest, either as a juvenile or an adult, whether or not resulting in a conviction. For each incident list date, nature of offense charged, law enforcement authority involved, location, and disposition, if known.

PETITIONER'S criminal record, other than the instant offense, is as follows:

Unruly conduct 7/29/89 paid $183 fine - no incarceration

Valdalism 8/3/89; 12 months probation and 82 hours of community service, all completed.

COPY

PETITIONER respectfully prays that he be granted clemency for the following reasons:

The sentence of 175 months for a 21 year old, first time, nonviolent offender with no significant prior record is unwarranted. Based solely on a $25,000 loan to a friend, falsely interpreted telephone recordings, and a codefendant's highly rewarded testimony, the punishment does not fit the crime as proved. The concept of holding minor players responsible for any and all drugs of a conspiracy, irregardless of whether that minor play had any knowledge or nexus with those drugs, undermines the concept of fairness. No drugs were introduced at trial as to Vignali, who never visited Minneapolis where the case was tried, yet he was held responsible for the drugs involved in a 30 defendant conspiracy, when he knew, at best, two people. By the end of 1998, Vignali will have served, with good time, almost five years, which is the mandatory minimum for the drugs which could have been bought with his loan.

The statements contained herein are true to the best of my knowledge and belief, and I understand that any misstatement of material fact contained herein may subject me to criminal prosecution and/or courts adverse action on my petition for executive clemency.

Date

/S/

Signature of Petitioner

If space is insufficient, additional pages may be added. Letters and/or other supporting material may be submitted with petition.

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U. S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

OCT 14 1998

The Honorable Xavier Becerra
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Becerra:

This follows up our telephone conversation of October 13, 1998, during which you asked me to advise you of the procedures followed by the Office of the Pardon Attorney (OPA) in the investigation and consideration of commutation petitions.

Commutation is a restricted form of clemency. It may reduce the number of years of a sentence, frequently to time already served, or, in cases still subject to parole laws, accelerate a petitioner's eligibility for parole consideration. Commutation in no way implies forgiveness of the underlying offense, but is simply a remission of some portion of the punishment. Eligibility for commutation ordinarily depends upon the unavailability of any other form of relief, such as direct appeal or collateral attack.

In commutation cases, typically we obtain and review the presentence report, judgment, most recent prison progress report, and the court decisions in the applicant's case, if any. In addition, in commutation cases raising a claim of illness, OPA requests that the Bureau of Prisons send relevant medical information. If the case is determined to be wholly without merit, no further investigation is undertaken and the case is reported to the White House in a summary denial format.

If it is determined that further investigation is warranted, OPA refers the case to the United States Attorney's office for comment, and requests that the United States Attorney contact the sentencing judge for his or her views. OPA may also solicit the views of the Bureau of Prisons or the investigating agency, depending on the case. After all the comments are received, we make the decision about whether to recommend for or against clemency, and write the appropriate report. The recommendation goes to the Deputy Attorney General for his approval before transmittal to the White House.

EXHIBIT
11

The rules governing clemency applications make no mention of the substantive criteria used in the evaluation of a particular case, and historically there has been considerable reluctance to articulate the basis on which clemency may be granted. Moreover, given the personal nature of the presidential pardon power, its exercise varies from one President to another. Since the granting of clemency is entirely discretionary with the President, he may decide to do so for any reason or for no reason. There is no appeal from a clemency decision and, in modern times, the reasons for a particular decision have generally not been disclosed.

A commutation of sentence is usually recommended only in exceptional circumstances, such as unwarranted disparity or severity of sentence, the rendering of an important service to the government not taken into account at sentencing, or terminal illness. Satisfactory prison adjustment and other evidence of rehabilitation are important factors, but commutation is rarely recommended on such grounds alone. Other relevant factors are the existence and nature of a prior criminal record, the effect on the general public of extending clemency in a particular case, and the existence of an adequate release plan. Since President Clinton has been in office, he has granted clemency in only three commutation cases.

I hope this letter has been helpful. If I can be of further assistance, please let me know.

Sincerely,

Roger C. Adams

Roger C. Adams
Pardon Attorney

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PHONE: (213) 483-1425
FAX: (213) 483-1429

COMMITTEE ON WAYS AND MEAN
SUBCOMMITTEE ON TRADE

Congress of the United States
House of Representatives
XAVIER BECERRA
30TH DISTRICT, CALIFORNIA

★ ★ ★ FAX COVERSHEET ★ ★ ★

Date: 11/22/2000 Number of Pages: 3
(Including coversheet)

To: HONORABLE WILLIAM JEFFERSON CLINTON
PRESIDENT OF THE UNITED STATES

Of: THE WHITE HOUSE

Fax # [redacted] Phone # _____

From: CONGRESSMAN XAVIER BECERRA
Office of Congressman Xavier Becerra
@ 213-483-1425

_____ For Your Information _____ As Requested _____ Other

Additional Message: _____

If there are any problems in receiving this FAX, please contact our office at 213-483-1425 *Thank You.*

EXHIBIT
12

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Congress of the United States
House of Representatives
XAVIER BECERRA
30TH DISTRICT, CALIFORNIA

SUBCOMMITTEE ON TRADE

November 21, 2000

Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

As has been brought to your attention in the past, Mr. Carlos Vignali, Jr. (#02786-112) and his family are seeking a commutation of his prison sentence. Mr. Vignali has been in custody since 1994 and is currently serving his14 year and 7 month prison term at Nellis Federal Prison Camp in Nevada.

Mr. Vignali's parents are dear friends of mine and solid, upstanding members of the Los Angeles community. They have made it their personal crusade to clear their son's record and bring him home. They believe their son to be innocent and, in any case, feel strongly that he has paid his debt to society.

Many highly respected leaders in Los Angeles and nationwide have weighed in on behalf of Mr. Vignali, including: His Eminence Cardinal Roger Mahony, Archbishop of Los Angeles, Congressman Esteban E. Torres (retired), California State Senator Richard G. Polanco, California Assemblymember Antonio R. Villaraigosa, and Los Angeles City Councilmember Richard Alatorre. I add my voice to those recommending a full evaluation of this case to determine if justice has been achieved in the case of Mr. Vignali.

As you exercise the executive power to commute sentences, I understand that a delicate balancing act must be undertaken. In the interest of redeeming the life of a young man, I respectfully urge you to weigh a few factors in Mr. Vignali's favor. Prior to Mr. Vignali's conviction, he had no criminal record whatsoever. Although convicted of drug possession and the illegal sale of drug narcotics, his parents remain highly disturbed by a variety of factors in play at Carlos' trial and believe that when Carlos loaned money to a friend he unwittingly became connected with the convicted narcotics ring. It is my understanding that neither drugs nor drug money was found in his possession. Also, throughout Mr. Vignali's sentence, he has conducted himself as a model prisoner. If commutation is granted, Mr. Vignali would return home to a safety net of family and community members acutely interested and engaged in his successful reentry as a productive member of society.

I respectfully urge you to take a thoughtful look at this case. The Vignali family's efforts deserve your careful consideration.

Thank you for your kind attention to this important matter.

Sincerely,

XAVIER BECERRA
Member of Congress

DEPUTY DEMOCRATIC WHIP
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
TRANSPORTATION
FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS

Congress of the United States
House of Representatives
Washington, DC 20515-0534

ESTEBAN E. TORRES
34TH DISTRICT, CALIFORNIA

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MONTEBELLO, EAST LOS ANGELES
(PHONE ONLY)
(213) 726-1904

August 4, 1998

Honorable William Jefferson Clinton
President of the United States of America
The White House
Washington, D.C. 20500

Hand Delivered

Dear Mr. President:

I respectfully request your immediate consideration of commuting the sentence of Carlos Vignali, Jr., [redacted] a young man who was convicted of drug possession and the illegal sale of drug narcotics. Mr. Vignali, a 27 year old with no prior criminal record, has been in custody since 1994. He is serving a 14 year and 7 month sentence at FCI Safford, Arizona.

I understand that Mr. Vignali's conviction in Minnesota Federal District Court was based on allegations that he conspired with 29 other individuals to distribute and sell narcotics. Neither drugs nor drug money was found in Carlos's possession. Carlos had simply loaned money to a friend, who happened to be involved in the sale of narcotics. At trial, the evidence offered against Carlos was misinterpreted telephone recordings between Carlos and his friend and the testimony of another alleged co-conspirator, who had negotiated a reduced sentence in exchange for his testimony.

Within the next two weeks, Carlos will file a Petition for Commutation of Sentence requesting his sentence be reduced to time served. I would appreciate your careful review and immediate consideration of approval of his petition.

Knowing Carlos, upon his release from custody, I am confident that he again will become a productive member of our society. Thank you for your kind attention to this important matter.

Sincerely,

Esteban E. Torres

ESTEBAN E. TORRES
Member of Congress

EXHIBIT
13

MAYORKAS-0001

REPRESENTING: BARRETT, EAST LOS ANGELES, HACIENDA HEIGHTS, INDUSTRY, LA PUENTE, LOS NIETOS, MONTEBELLO, NORWALK, PICO RIVERA, ROSE HILLS, SOUTH SAN GABRIEL, SANTA FE SPRINGS, VALINDA AND WHITTIER

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PAGE 02 VIA VISTA

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PHOTOCOPY

H. Carlos Vignali
[redacted]

VIA FEDERAL EXPRESS

9 December 2000

Hugh Rodham, Esq.
RODHAM & FINE, P.A.
633 Southeast 3rd Avenue, Suite 4R
Fort Lauderdale, Florida 33301

RE: TESTIMONIAL LETTERS FOR CARLOS A. VIGNALI, JR.

Dear Hugh,

Pursuant to your conversation with Jaime Casso, I am enclosing the testimonial letters I have been able to secure as of today. These letters are from some of the most respected individuals in the State of California. They include the following:

- Second most powerful elected official in California,
  Speaker of the Assembly Robert M. Hertzberg
- Senate Majority Leader and Chair of the Latino Legislative Caucus
  Senator Richard Polanco
- Prominent and long time Los Angeles City Coucilmember
  Councilman Mike Hernandez

In addition to his previous letter, Congressman Xavier Becerra is willing to make any telephone calls you deem appropriate, i.e., White House staff and/or Justice Department.

I am also in the process of obtaining testimonials from Cardinal Roger Mahoney and Los Angeles County Sheriff Leroy D. Baca. As soon as these letters are received, they will be sent to you immediately.

Your support and help for my son is greatly appreciated and will never be forgotten. If you have any questions and/or comments, please call me any time.

Sincerely,

H. Carlos Vignali

HCV/lv

c: James M. Casso, Esq.

EXHIBIT
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ROBERT M. HERTZBERG
SPEAKER OF THE ASSEMBLY

December 8, 2000

Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

I respectfully request your approval of commuting the sentence of Carlos Vignali, Jr., (#02786-112), a native Californian, who was convicted of drug possession and the illegal sale of narcotics in Minnesota Federal District Court. Although Mr. Vignali was convicted, neither guns, drugs, nor drug money was found in Mr. Vignali's possession. Mr. Vignali, a 29 year old and father of a young son, has been in custody since 1994. Currently, he is serving a 14 year 7 month, sentence at FPC Nellis, Nevada.

Throughout his incarceration, Mr. Vignali has been a model prisoner. When he received his General Educational Development Program Diploma (GED) in 1996 while at FCI Florence, Colorado GED, he was honored as the student of the year. He has a "zero" Security Point Level and has maintained a clear record of "no" Incident Reports. Because of his exemplary conduct and behavior, two years ago when Mr. Vignali was transferred to FPC Nellis from FCI Safford, Arizona, the Bureau of Prisons placed him, without a security escort, on a Greyhound bus destined for Las Vegas, Nevada. Mr. Vignali, without a problem, arrived at FPC Nellis at the appointed time. In short, the Bureau of Prisons entrusted him to arrive at FPC Nellis on his own, and he fully complied.

In 1998, Mr. Vignali filed a Petition for Commutation of Sentence requesting his sentence be reduced to time served. Your immediate approval of his petition is greatly appreciated. It is time to return Carlos Vignali to his family and again, become a productive member of society.

Thank you for your kind attention to this matter and for your commendable services as our President over the past eight years.

Very Truly Yours,

Robert M. Hertzberg

RMH:cd

EXHIBIT
15

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CHAIR, BUDGET SUBCOMMITTEE
NO. 4 GENERAL GOVERNMENT

CHAIR, LATINO LEGISLATIVE
CAUCUS

CHAIR, JOINT COMMITTEE ON
PRISON CONSTRUCTION &
OPERATIONS

CHAIR, SUBCOMMITTEE ON
PROFESSIONAL & VOCATIONAL
BOARDS

CHAIR, SUBCOMMITTEE ON THE
AMERICAS

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO
TWENTY-SECOND SENATORIAL DISTRICT

MEMBER
BUDGET AND FISCAL REVIEW
BUSINESS AND PROFESSIONS
COMMITTEE
ELECTIONS AND
REAPPORTIONMENT
FINANCE INVESTMENT AND
INTERNATIONAL TRADE
HEALTH AND HUMAN SERVICES
LOCAL GOVERNMENT
PUBLIC SAFETY
TRANSPORTATION

December 6, 2000

The Honorable William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington DC 20050

RE: **CARLOS A. VIGNALI Jr - ID No. 02786-112 – Commutation of sentence**

Dear President Clinton:

I am writing to you on behalf of the 23-member California Latino Legislative Caucus regarding the case of Mr. Carlos A. Vignali Jr. Mr. Vignali was convicted for drug possession and the illegal sale of narcotics in Minnesota Federal District Court.

The Caucus respectfully requests you commute Mr. Vignali's sentence and that he be released immediately.

We believe that Mr. Vignali was convicted despite the fact that the criminal investigation did not reveal any guns, drugs, or illegal money in Mr. Vignali's possession. Mr. Vignali was a 22-year-old investor and did not have any contacts demonstrating his involvement in the sale or purchase of drugs.

Mr. Vignali's character is evident in his behavior since conviction. He has been a model prisoner, without any Incident Reports or Security Points. He has completed the General Education Development Program and received the GED Diploma at the FCI Florence, Colorado facility. He is considered a model prisoner in the federal correctional system.

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PENGAD-Bayonne, N.J.

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916)
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (2

Given the facts of the case and Mr. Vignali's conduct during incarceration, the Caucus has investigated the impact of Mr. Vignali's release. We are convinced that Mr. Vignali will return to his family in southern California. Mr. Vignali's family is a loving, embracing family and is committed to supporting him. Mr. Vignali gives every indication that with his family's support, he will become a productive, contributing member of society.

Mr. President, your power to grant clemency to Mr. Vignali will be an appropriate and humane decision. Mr. Vignali has demonstrated his remorse, his model conduct in prison demonstrates his commitment to becoming a productive member of society, and his family has convinced us of its commitment to assisting Mr. Vignali become a contributing member of society. We appeal to you to exercise your power and commute Mr. Vignali's sentence.

Thank you for your consideration.

Sincerely,

RICHARD G. POLANCO
Senate Majority Leader, and
Chair, Latino Legislative Caucus
RGP: sma

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COUNCILMEMBER
MIKE HERNANDEZ
First Council District

200 No. Main St.
City Hall East, Room 413
Los Angeles, CA 90012
(213) 485-3451 Phone
(213) 485-8907 Fax

District Office
163 S. Ave. 24
Room 202
Los Angeles, CA 90031
(213) 485-0763 Phone
(213) 485-8908 Fax

December 4, 2000

Honorable William Jefferson Clinton
President of the United States
The White House Washington, D.C. 20500

Mr. President:

This letter is written in hopes that you would strongly consider commuting the sentence of Carlos A. Vignali.Jr. (#02786-112), a native Californian who was convicted of drug possession and the illegal sale of narcotics in Minnesota Federal Court. Although convicted, you will hopefully note, that no evidence was presented that Mr. Vignali had any involvement with illegal narcotics prior to the last three months leading up to his arrest.

Incarcerated since 1994, Mr. Vignali, now age 29 with a young son awaiting his father's return, has no doubt learned his lesson and has willfully accepted responsibility for his actions. This is apparent in the fact that since his incarceration Mr. Vignali has remained a model prisoner. Indeed, he has obtained his GED while incarcerated and did, in fact, earn Student of the Year honors in 1996 for his efforts. Moreover, he has maintained clear conduct throughout his incarceration with absolutely no incident reports. In spite of his conviction, Mr. Vignali has remained hopeful to one day return to society as a contributing member, and has conducted himself accordingly.

Today, Mr. Vignali remains most fortunate in that throughout his ordeal, he has not lost the care of his loving family who anxiously await his return. Upon his anticipated release, you can be most assured that Mr. Vignali will continue to have this unmitigated support as he would be returning to work in the family business, a business that has been a mainstay in the local community for more than 30 years.

It is my sincerest hope that you will appreciate this appeal on behalf of Mr. Carlos A. Vignali Jr.- a young man who once erred and who today would greatly appreciate a second chance to rejoin his loved ones as a resident of our great City, Los Angeles.

Sincerely,

MIKE HERNANDEZ, Councilmember
First District

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RODHAM & FINE, P.A.
[redacted]

FAX COVER SHEET

DATE: DECEMBER 21, 2000

TO: DAWN
% BRUCE LINDSEY

FROM: HUGH RODHAM

FAX NO: [redacted]

RE: CARLOS VIGNALI, JR.

DAWN,

ENCLOSED PLEASE FIND A COPY OF THE LETTER WE DISCUSSED.

WE ARE TRANSMITTING 2 PAGE(S) INCLUDING THIS COVER PAGE. IF THERE ARE ANY DIFFICULTIES, PLEASE CONTACT RODHAM & FINE, P.A., AT [redacted]

THIS FACSIMILE TRANSMISSION CONTAINS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE IDENTIFIED ABOVE. IF YOU ARE NOT THE ADDRESSEE, ANY COPYING, DISTRIBUTION OR DISCLOSURE OF THE CONTENTS HEREOF IS PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION BY MISTAKE, KINDLY NOTIFY US BY TELEPHONE IMMEDIATELY SO THAT WE CAN MAKE ARRANGEMENTS FOR THE RETURN AND DESTRUCTION OF THE TRANSMISSION



BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
[illegible]

GLORIA MOLINA
SUPERVISOR, FIRST DISTRICT

December 20, 2000

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PHOTOCOPY

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Clinton:

I respectfully request your serious consideration for the commutation of the sentence of Carlos Vignali, Jr. (Case No. 02786-112). While I usually do not write letters in support of individuals I do not know personally, I am making this request because I do know Mr. Vignali's family and have reviewed his case carefully. What I have learned is that Mr. Vignali is young man who made a mistake in his life and is immensely remorseful and has demonstrated a genuine interest to re-join the community.

While a native of California, Mr. Vignali was convicted of drug possession and illegal sale of narcotics in the Minnesota Federal District Court. Currently, he is serving a 14 year, 7 month sentence at FPC Nellis, Nevada.

According to a December 9, 2000 United States Department of Justice Federal Bureau of Prisons' Progress Report, Mr. Vignali has had, "outstanding institutional adjustment to date and has maintained clear conduct as well as outstanding work evaluations." The report further states that Mr. Vignali has worked very hard to improve himself by completing his General Educational Development Program. As a worker, the report describes Mr. Vignali as an "outstanding worker who does superior work and needs little or no supervision. His detail supervisors indicate that he handles himself in a professional manner and is a dedicated individual who takes initiative in everything he does." The report describes a young man ready and able to return as a productive member of our society.

Mr. Vignali comes from a loving and caring family who is ready to help his transition back to society. Thank you for your careful consideration of this case.

Sincerely,

GLORIA MOLINA
Supervisor, First District

GM/MS/jp

TOTAL P.02

Archdiocese of Los Angeles | Office of the Archbishop (213) 637-7288 | 3424 Wilshire Boulevard | Los Angeles California 90010-2241

December 11, 2000

The Honorable William J. Clinton
President of the United States
Washington, D.C. 20500

Re: Carlos Vignali, Jr.

Dear President Clinton:

I am writing to support the request to commute the sentence of Carlos Vignali, Jr. (02786-112). While I do not personally know Carlos Vignali, Jr., I know his family and his family's friends who have shared with me the details of his arrest, trial, and conviction.

Mr. Vignali's was convicted of drug possession and the illegal sale of narcotics in the Minnesota Federal District Court. However, prior to his conviction, he had no criminal record or arrests. Mr. Vignali's family remains highly disturbed by a number of factors which influenced his trial and believe that when Carlos, Jr. loaned money to a friend, he unwittingly became connected with a narcotics ring. It is my understanding that neither drugs nor drug money was found in Carlos Vignali, Jr.'s possession. Notwithstanding these mitigating factors, he was sentenced to fourteen years and seven months in federal prison.

Throughout his incarceration, Carlos Vignali, Jr. has been a model prisoner, received his General Equivalency Diploma ("GED"), and was honored as "Student Of The Year". He has a "zero" Security Point Level and has maintained a clear record with no Incident Reports.

The granting of clemency to Carlos Vignali, Jr. is worthy of your consideration. His relatives, a very respected, active and well-known Latino family, are committed to assist Carlos, Jr. to again become a contributing member of society.

Thanking you for your review and consideration, and with every best wish, I am

Sincerely yours in Christ,

+ Roger Cardinal Mahony

His Eminence
Cardinal Roger Mahony
Archbishop of Los Angeles

cb

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PHOTOCOPY



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169
(213) 526-5100

SHERMAN BLOCK, SHERIFF

November 1, 1996

Ms. Joan L. White
U.S. Probation Officer
600 Federal Courts Building
316 North Robert Street
St. Paul, Minnesota 55101-1423

Dear Ms. White:

RE: Inmate Carlos A. Vignali #02786-112

Mr. Carlos C. Vignali, the father of inmate Carlos A. Vignali, contacted me indicating that he hopes that his son can be transferred to a Federal Correctional Institution in the State of California, preferably in Lompoc.

Mr. Vignali, a highly respected businessman, cooperated with the initial investigation that enabled Sheriff's Department investigators to arrest his son for the offenses he was convicted of. This level of cooperation is rare and it reflects very highly on Mr. Vignali's integrity. That is why I am writing this letter.

Mr. Vignali and his family believe that their son, a first-time offender, would benefit significantly with more visitation on their part. Moreover, Mr. Vignali's father is unable to travel lengthy distances.

Mr. Vignali recognizes that the priorities and policies of the Federal Corrections Department are important and must be followed. Within these guidelines, your assistance to Mr. Vignali's request will help the Vignali family remain close to one another and should help inmate Vignali lead a crime-free life once he is released from custody.

The Vignali family are very fearful of the inmate population peer influence on their son and believe that frequent visits to him will enable them to better monitor his progress in

MA[illegible] 00014

EXHIBIT
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serving his debt to society. Moreover, the Vignali family has been severely traumatized by their son's offenses and conviction. The move closer to them will ensure their family strength and assist in their healing.

Thank you for your consideration of Mr. Vignali's request.

Sincerely,

LEROY D. BACA, CHIEF
FIELD OPERATIONS REGION II

nt by: QUINN EMANUEL ; 06/22/01 9:42AM;Jetfax #77; Page 2/2
Received: 6/20/ 1 3:10PM; 3252876600 -> QUINN EMANUAL/URQUHART&OLIVER ; Page 2
JUN-20-2001 14:57 FROM OFFICE OF SHERIFF TO [redacted] P.02

December 8, 2000

The Honorable William Jefferson Clinton
President of the United States of America
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

MR. CARLOS VIGNALI

This letter will confirm my support for Mr. Carlos Vignali, Sr., as a man of the highest integrity and trustworthiness.

I have known Mr. Vignali for many years and have witnessed his consistent support of law enforcement and especially the policing effort of the Los Angeles County Sheriff's Department. Moreover, there are occasions when he has brought forward to me incidents of criminal acts that, upon investigation, resulted in the prosecution and conviction of the offenders, some of which were members of law enforcement.

I am confident that Mr. Vignali will fulfill any commitment he makes regarding any matter entrusted to him.

Sincerely,

ORIGINAL SIGNED

LEROY D. BACA
SHERIFF

EXHIBIT
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Bruce Lindsey – Counsel's Office

[redacted]

Folder: Pardon/Clemency – Carlos Vignali, Jr.



THE WHITE HOUSE
WASHINGTON

Hugh says this is very important to him and the First Lady as well as others.

Sheriff Baca (from LA) is more than happy to speak with you about him but is uncomfortable writing a letter offering his full support.

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REPORT OF INVESTIGATION (Continuation) DATE February 18, 1976 PAGE 5 OF 10

FILE TITLE [redacted] IDENTIFIER [redacted] FILE NUMBER [redacted]-76-0031

[redacted]

Carlos VIGNALI - Co-owner of the C & H Auto Body Shop. His drug relationship with the [redacted] Organization is also unknown. VIGNALI however is a close personal friend of [redacted] In November, 1975, he negotiated with ATF Agents to sell a machine gun and stated to them that he had also smuggled heroin into the United States utilizing automobiles. [redacted]

12. RELATED FILES (cont.)

[redacted]

CLUSIONS:

1. Since current intelligence indicates that the remainder of the [redacted] Family in Los Angeles, [redacted] are still dealing in multi-kilogram quantities of heroin, it is recommended that a grand jury probe be initiated with the object of eliminating the remaining [redacted] Organization in Los Angeles by obtaining indictments on [redacted] possibly other members of their organization such as [redacted] Carlos VIGNALI, [redacted]

[redacted]

DEA Form [redacted]-68

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Department of Justice
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HEADQUAR

EXHIBIT 23

V-DEA-00009

REPORT OF INVESTIGATION (Continuation) DATE December 1, 1976 PAGE 2 OF 2

FILE TITLE [redacted] IDENTIFIER [redacted] FILE NUMBER R1-76-0031

PROGRAM CODE CENTAC XVI [redacted]

[redacted]

Carlos VIGNAL - the [redacted]s used his body shop in Los Angeles to take heroin out of the drive shafts of vehicles brought into the United States from Mexico.

[redacted]

PHYSICAL DESCRIPTIONS:

[redacted]

5. Carlos VIGNALI, NADDIS #485314.

[redacted]

DEA Form [redacted] - 6a

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Drug Enforcement Administration
Department of Justice HEADQUA

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EXHIBIT 24

V-DEA-00012

REPORT OF INVESTIGATION *(Continuation)*	1. FILE NO. G3-93-Z005	2. G-DEP IDENTIFIER [redacted]
Page 7 of 11	3. FILE TITLE [redacted]	
5. PROGRAM CODE	6. DATE PREPARED March 19, 1993	

[redacted] The "traps", (hidden compartments) were built into the truck through Carlos VIGNALI Jr. for $5,000.00. The vehicle was registered to a friend of [redacted] The vehicle has since been sold.

15[redacted] has also purchased cocaine from Carlos VIGNALI Jr. of Los Angeles. VIGNALI recently purchase[redacted] townhouse at 18215 Burbank Blvd., #13, Tarzana, California. [redacted] had put $100,000.00 down on the condominium and paid $389,000.00 [redacted] also put over $100,000.00/$200,000.00 worth of renovations in the residence. VIGNALI's father Carlos VIGNALI aka "pops" owns a body shop, at 1260 Figueroa and is the source of supply for his son. VIGNALI Sr. lives in [redacted] old house in Palasades, Ca. [redacted] has bought and sold vehicles through VIGNALI's body shop. [redacted] had purchased a "dooley" pick up truck from VIGNALI and also sold his 500E Mercedes recently through VIGNALI. The VIGNALI's are also gamblers and travel to Las Vegas frequently to fights and to gamble. It is not unusual for VIGNALI Sr. to wager $50,000.00 - $100,000.00 at a time. An associate of VIGNALI, Jorge TORRES aka "G" owns NUMERO UNO Market on Jefferson St. in

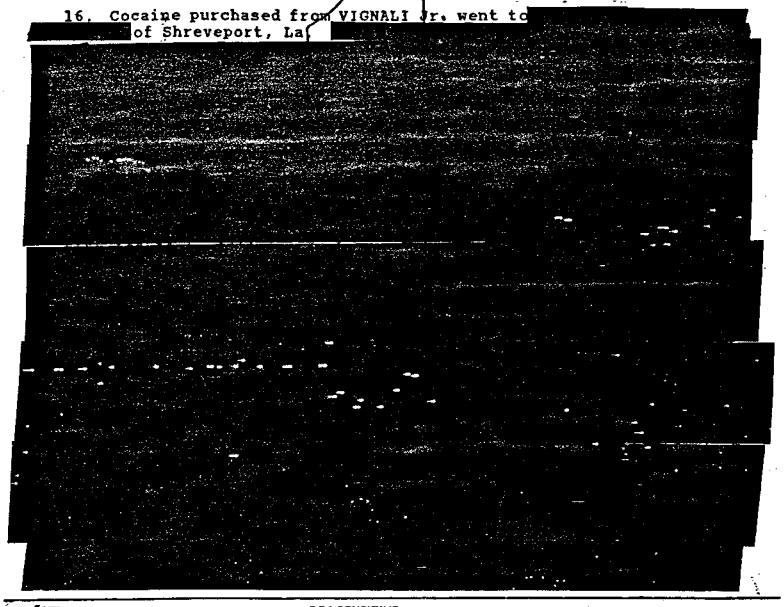
EXHIBIT 25

REPORT OF INVESTIGATION
(Continuation)

1. FILE NO. G3-93-2005	2. G-DEP IDENTIFIER [redacted]
3. FILE TITLE [redacted]	
Page 8 of 11	
5. PROGRAM CODE	6. DATE PREPARED March 19, 1993

Los Angeles. Across the street from the Market, TORRES maintains a warehouse full of luxury vehicles and tractor trailers used to transport cocaine. The warehouse also has a penthouse complete with a casino where TORRES and VIGNALI gamble [redacted] estimated that TORRES has a net worth between 200-300 million dollars.

16. Cocaine purchased from VIGNALI Jr. went to [redacted] of Shreveport, La [redacted]



REPORT OF INVESTIGATION (Continuation)	1. FILE NO. GFR1-93-4075	2. G-DEP IDENTIFIER [redacted]
Page 6 of 11	3. FILE TITLE VIGNALI, Carlos et al.	
5. PROGRAM CODE	6. DATE PREPARED April 26, 1993	

[redacted]

[redacted] said that approximately five (5) years ago he/she met George TORRES, Carlos VIGNALI, Sr., and Carlos VIGNALI, Jr., in Las Vegas, Nevada [redacted] said that TORRES and the VIGNALI's came with an entourage and stayed at Caesar's Palace in the Presidential Suite [redacted] said that they maintained that entire floor at Caesar's Palace. TORRES and the VIGNALI's are very close to the Vice President of Caesar's Palace. [redacted] stated that TORRES and the VIGNALI's love to gamble and have lost millions in a weekend.

23. George TORRES was described as a Mexican male, 5'10" to 6'0", 200 lbs., early 30's, dark black hair with tattoo's on his neck and all over both arms, also known as "Big G". Carlos VIGNALI, Sr., was described as a Mexican male, 5'8", 250 to 300 lbs., mid-40's, grayish-black hair, dark complected and clean shaven also known as "POPS". Carlos VIGNALI, Jr., was described as a Mexican male, 5'10" to 5'11", 200 lbs., 21 or 22 years old, black crew cut hair with a mustache, also known as "Jr".

24. The VIGNALI's own C & H AUTO REPAIR located at 1360 S. Figueroa Street, Los Angeles, California. The VIGNALI's and TORRES co-own the NUMERO UNO SUPERMARKET located at 701 E. Jefferson Boulevard, Los Angeles, California and a swapmeet that is across the street from

REPORT OF INVESTIGATION
(Continuation)

Page 7 of 11

1. FILE NO.	2. G-DEP IDENTIFIER
GFR1-93-4075	[redacted]
3. FILE TITLE	
VIGNALI, Carlos et al.	
5. PROGRAM CODE	6. DATE PREPARED
	April 26, 1993

the aforementioned supermarket. TORRES also has a warehouse named GT T located at 700 E. Jefferson Boulevard, Los Angeles, California. TORRES houses several expensive vehicles in that warehouse, i.e., Mercedes, Porsche's, diesel trucks, antique low riders, land cruisers, and jet ski's on trailers [redacted] said that TORRES has approximately thirty (30) vehicles in the warehouse. The VIGNALI's and TORRES employ twenty to thirty armed guards that patrol the businesses [redacted] said that they may also own a security firm.

25 [redacted] stated that TORRES' warehouse has two levels, and is approximately seventy to eighty thousand square feet. The first level has offices, a casino and the aforementioned vehicles and the second level has a gym that contains three hundred thousand dollars ($300,000.00) worth of equipment and a two to three bedroom apartment. TORRES maintains several million dollars at the warehouse and VIGNALI, Sr., also has a lot of expensive vehicles at C & H AUTO REPAIR. [redacted]

[redacted] believes that TORRES is worth at least two to three hundred million dollars ($200-300,000,000.00). [redacted] heard that TORRES built a seven million dollar ($7,000,000.00) house in Downey or Pomona, California and the landscaping cost seven hundred and fifty thousand dollars ($750,000.00). VIGNALI, Sr., purchased [redacted] house located in Pacific Palisades, California and it is purported to be worth million dollars ($10,000,000.00). VIGNALI, Jr., purchase[redacted] condo located at d215 Burbank #13, Tarzana, California. VIGNALI Jr.'s pager number was 213-717-9826.

[redacted]

1980) — 5A PTR

DEA SENSITIVE

DRUG ENFORCEMENT ADMINISTRATION

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V-DEA-00029

U.S. Department of Justice
Drug Enforcement Administration

REPORT OF INVESTIGATION

Page 1 of 2

Program Code	2. Cross File / Related Files	3. File No.	4. G-DEP Identifier
[redacted]		R1-97-0872	[redacted]
At: Los Angeles, CA		6. File Title TORRES, George, et. al.	
7. ☐ Closed ☐ Requested Action Completed ☐ Action Requested By:		8. Date Prepared 09/25/97	

9. Other Officers:

10. Report Re: CASE INITIATION REPORT on the George TORRES cocaine organization

BASIS OF INVESTIGATION

For information of DEA, [redacted] has been approached by investigators from LA IMPACT and the Santa Barbara Regional Narcotics Enforcement Team, concerning George TORRES and his associates being involved in a large scale drug trafficking organization. This organization has been in existence since the middle 1980's when it was closely associated with th[redacted] family in their drug trafficking. By the early 1990's this group were transporting approximately 1,800 kilograms of cocaine into the Los Angels area from Mexico. At that time they were smuggling the cocaine using the [redacted] TORRES's tractor- trailer trucks, concealing the drugs inside laundry detergent and jalapeno chilli cans. [redacted]

Since that time TORRES has continued to be involved in drug trafficking and information shows that his organization supply various drug trafficking organizations throughout the United States. TORRES's organization has used illicit profits derived from drug trafficking to buy legitimate businesses and properties throughout Los Angels and southern California. One of these businesses, NUMERO UNO MARKET, INCORPORATED, located at 701 East Jefferson, Los Angeles is a large grocery with 1996 income of $ 42 million. Other businesses that the organization has a controlling interest include the following; NUMERO UNO, in El Monte, LA ESTERA MARKET, TOVICEP, INC., VCG ENTERPRISES, INC. G $ R WHOLESALE, and G & R WHOLESALE GROCERS. The properties that this organization has purchase range in value from $ 31,000 to $ 4,250,707. Investigators believe that the organization uses these

11. Distribution:		13. Date
Division	[redacted]	09/25/97
District		15. Date
Other		09/25/97

DEA Form -6
(Rev. 1994)

DEA SENSITIVE
Drug Enforcement Administration

1-Prosecutor

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U.S. Department of Justice
Drug Enforcement Administration

REPORT OF INVESTIGATION *(Continuation)*	1. File No. R1-97-0872	2. G-DEP Identifier [redacted]
	3. File Title [redacted]	
4. Page 2 of 2		
5. Program Code	6. Date Prepared 09/25/97	

b[illegible] to laundry its drug proceeds.

TARGET

The immediate targets of this investigation will be TORRES and members of his trafficking organization.

INDEXING

1. TORRES, George- NADDIS: 3291681

[redacted]

3. VIGNALI, Carlos Horatio- NADDIS: Pending
(See attached DEA 202 for GDEP information)

[redacted]

U.S. Department of Justice
Drug Enforcement Administration

REPORT OF INVESTIGATION

Page 1 of 3

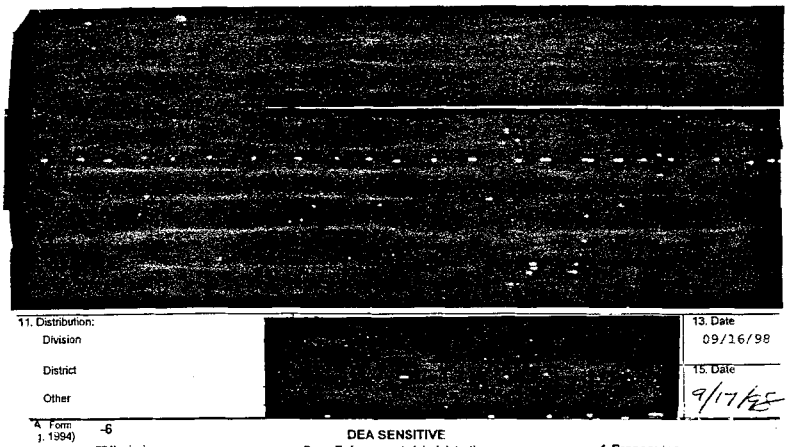
Program Code	2. Cross File / Related Files	3. File No.	4. G-DEP Identifier
5. [redacted] At: Los Angeles F.D.	☑ 245C-LA-210122	R1-98-0689	[redacted]
		6. File Title TORRES, George, et. al	
7. ☐ Closed ☐ Requested Action Completed ☐ Action Requested By:		8. Date Prepared 9/16/98	

9. Other Officers [redacted]

10. Report Re: CASE INITIATION REPORT on the George TORRES cocaine trafficking organization

BASIS OF INVESTIGATION

The George TORRES drug trafficking organization has been in existence since the middle 1980's when it was closely associated with the [redacted] family drug trafficking organization. In the early 1990's, the [redacted]/TORRES organizations were transporting approximately 1,800 kilograms of cocaine from Mexico into the Los Angeles area. To date, the investigation shows that the TORRES organization is involved in the importation and distribution of drugs throughout the United States. Latest intelligence reveals that this group is distributing approximately one hundred (100) kilograms of cocaine per month.



[redacted]

11. Distribution:		13. Date
Division	[redacted]	09/16/98
District		15. Date
Other		9/17/98

A Form -6
(Rev. 1994)
JRB:jrh

DEA SENSITIVE
Drug Enforcement Administration

1-Prosecutor

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EXHIBIT
28

REPORT OF INVESTIGATION *(Continuation)*	1. File No. R1-98-0689	2. G-DEP Identifier [redacted]
	3. File Title TORRES, George, et. al	
Page 2 of 3		
5. Program Code	6. Date Prepared 9/16/98	

George TORRES is the head of this organization. TORRES' direct associates include [redacted] Carlos VIGNALI. [redacted] Carlos Horatio VIGNALI's role in the organization is relatively unknown at this time. It is believed that VIGNALI functions as a financial partner in the organization. VIGNALI has been involved in organizing meetings between TORRES and individuals with extensive criminal backgrounds.

The TORRES organization has used its profits from drug trafficking to purchase legitimate businesses and properties throughout the Southern California area and a large number of vehicles. The principal business operated by this organization is NUMERO UNO MARKET, INCORPORATED, located at 701 East Jefferson, Los Angeles. Other businesses in which George TORRES has a controlling interest include the following: NUMERO UNO - El nte, LA ESTRELLA MARKET, G & R WHOLESALE, G & R WHOLESALE GROCERS, OVICEP, INC., VCG ENTERPRISES, INC., and ELKHAN. The grocery and wholesale business are cash intensive thus making it easy to launder illicit funds through them. In 1996, TORRES' businesses had sales of approximately $ 50,000,000. Additionally, this organization has purchased at least thirty-five properties throughout Southern California with assessed values ranging from $ 31,000 to $ 4,250,707. These properties include a ranch in Santa Ynez, the target's principal residence in Downey as well as various other residential properties being used by TORRES' associates. Investigators believe that TORRES uses these businesses, properties and vehicles to launder his drug profits.

Members of the TORRES organization have been involved in various acts of violence. In 1996, TORRES was arrested for being a felon in possession of a firearm. The Los Angeles Police Department (LAPD) has named TORRES a suspect in two murders. One involved a disgruntled employee and the other involved the owner of a property adjacent to one of TORRES' businesses. TORRES has been known to intimidate and threaten others and in so doing likes to portray himself as a Mafia member. He often uses his associates to carry out these acts of intimidation. [redacted]

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U.S. Department of Justice
Drug Enforcement Administration

REPORT OF INVESTIGATION (Continuation)	1. File No. R1-98-0689	2. G-DEP Identifier [redacted]
Page 3 of 3	3. File Title TORRES, George, et. al	
5. Program Code	6. Date Prepared 9/16/98	

INDEXING

1. **TORRES, George** - NADDIS #3291351
   Residential address: 9461 Raviller Drive, Downey, CA 90240
   CII#: A06623984
   SSN: 569-72-2172, 569-17-5448
   Aliase: Jaime Ernesto Garcia

[redacted]

4. **VIGNALI, Carlos Horatio** - NADDIS #4358266
   CDL: E0525168
   Associate of George TORRES (NADDIS #3291351)

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REPORT OF INVESTIGATION *(Continuation)*	1. FILE NO. GFR1-93-4007	2. G-DEP IDENTIFIER [redacted]
Page 3 of 5	3. FILE TITLE CARLOS ANIBAL VIGNALI	
5. PROGRAM CODE HID-100	6. DATE PREPARED November 10, 1992	

6. On Wednesday, November 04, 1992; [redacted] spoke with [redacted] (U.S. Customs-Torrance, California office) regarding C & H Auto Body Shop. [redacted] relayed to [redacted] U. S. Customs agents participating in the Operation Northern Cross-Illinois State Police joint narcotics task force requested that [redacted] verify the exsistence of a C & H Auto Body Shop located at 1360 South Figueroa Street, Los Angeles. S/A [redacted] had no other information reference the intricate involvement of C & H Auto Body Shop to Operation Northern Cross' investigation. [redacted] referred [redacted] FBI-Los Angeles) for possible further information.

7. On Wednesday, November 04, 1992; [redacted] spoke with [redacted] U.S. Customs-John Wayne Airport; Santa Ana, California). [redacted] relayed to [redacted] that through investigations that a similar source of supply for vehicles possiby being utilized for illicit activities had been established. [redacted] continued by relaying that a member of the Los Angeles County Sheriff's Department Operation Safe Streets(gang enforcement unit) requested that [redacted] conduct California, U.S.A. - Tijuana, Mexico border crossing history checks on approximately 4500 venciles associated with various gangs. [redacted] found, through Department of Motor Vehicles registration checks, that a great number of the vehicles were/had been registered to "Pic Your Part/Help Yourself" located at 1301 Orangewood Ave.; city of Anaheim, California. On Wednesday, October 28, 1992; [redacted] conducted a California Department of Motor Vehicles records check on Carlos Anibal VIGNALI, d.o.b.: 5-30-71, CDL #A2150090. [redacted] conducted vehicle registration checks on all vehicles listed as being cited for California Vehicle Code violations driven by VIGNALI at the time the offense occurred; TFO V. Y. Wilson checked the vehicle registration for California license # [2FJP747]; [2FJP747], CA. registered owner is to "Pic Your Part/Help Yourself" located at 1301 E. Orangewood Ave.; Anaheim, California 92805.

DEA SENSITIVE
DRUG ENFORCEMENT ADMINISTRATION
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V-DEA-00024

EXHIBIT 29

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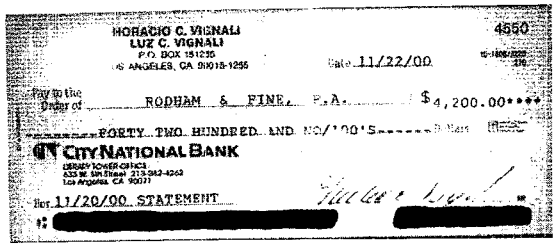


HORACIO C. VIGNALI
LUZ C. VIGNALI
P.O. BOX 151235
LOS ANGELES, CA 90015-1255

4550

Date 11/22/00

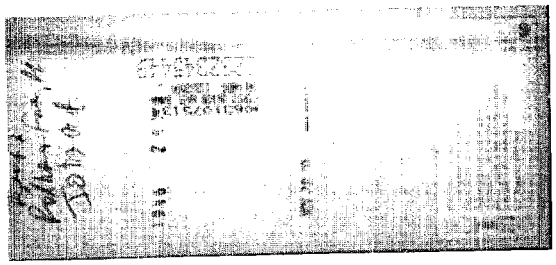
Pay to the Order of RODHAM & FINE, P.A. $4,200.00****

FORTY TWO HUNDRED AND NO/100'S Dollars

CITY NATIONAL BANK
DEBRA TOWER OFFICE
635 W. 5th Street 213-242-4262
Los Angeles, CA 90071

For 11/20/00 STATEMENT

[redacted]



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ROLL 3833
JOB 00345 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# [redacted]

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

EXHIBIT
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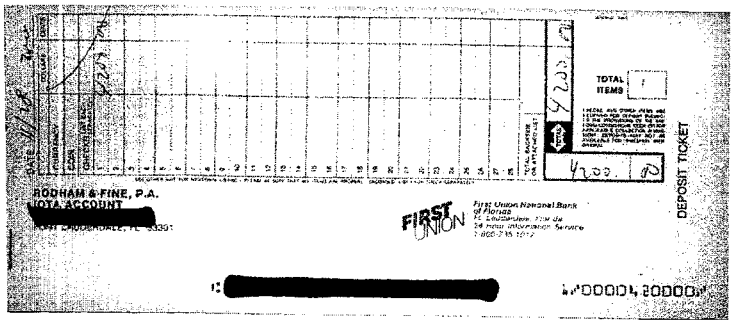

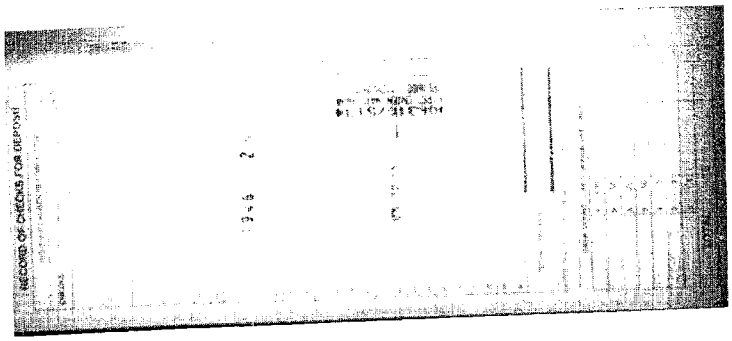

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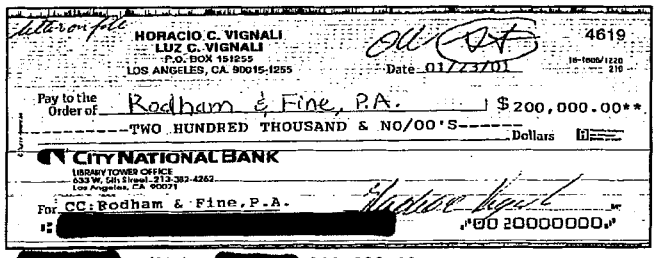
ROLL 3833
JOB 00345 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

letter on file



HORACIO C. VIGNALI
LUZ C. VIGNALI
P.O. BOX 151255
LOS ANGELES, CA. 90015-1255

4619

Date 01/23/01

Pay to the Order of Rodham & Fine, P.A. $200,000.00**

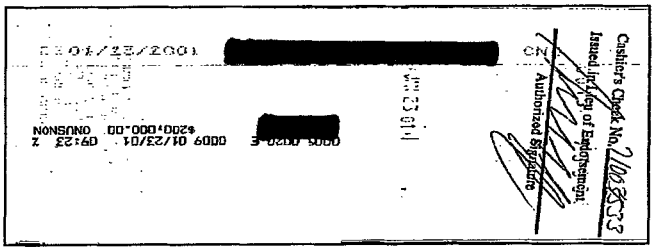
----------TWO HUNDRED THOUSAND & NO/00'S---------- Dollars

CITY NATIONAL BANK
LIBRARY TOWER OFFICE
633 W. 5th Street 213-382-4262
Los Angeles, CA 90071

For CC: Rodham & Fine, P.A.

[redacted] 00 20000000

[redacted] 1/23/01 [redacted] 200,000.00



01/23/2001 [redacted] CN

Cashier's Check No. 21003533
Issued in Lieu of Endorsement
Authorized Signature

[redacted]

NONSUNO 00 000,00 $200,000.00 09:23 Z

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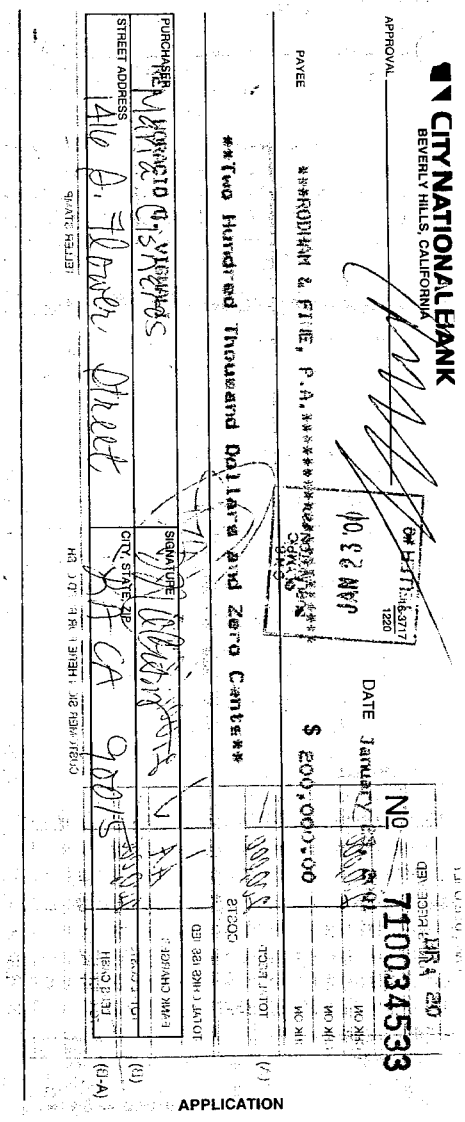
31



CITY NATIONAL BANK
BEVERLY HILLS, CALIFORNIA

APPROVAL

16-3717
1220

JAN 23 '01

DATE January 23, 2001

№ 710034533

PAYEE ***RODHAM & FINE, P.A.**********

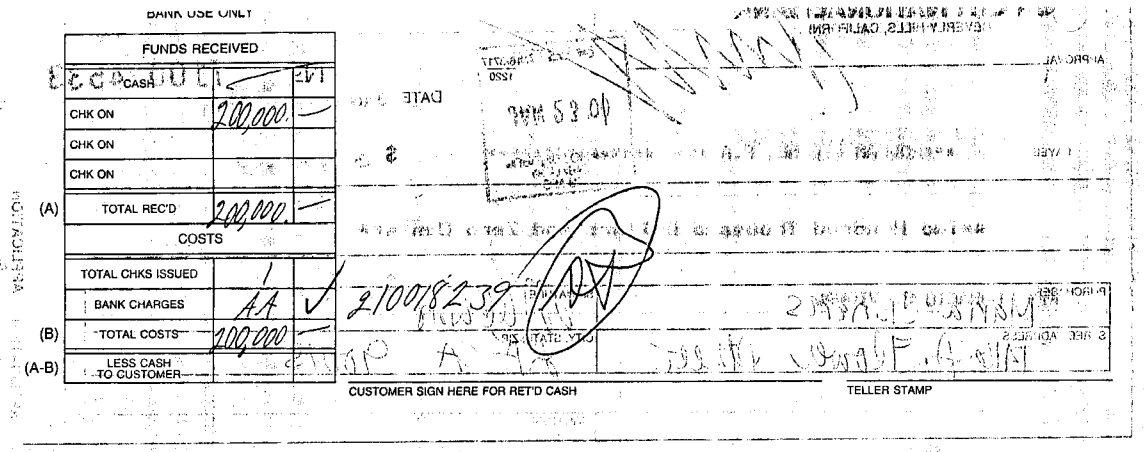
$ 200,000.00

Two Hundred Thousand Dollars and Zero Cents

PURCHASER Maria Cisneros	SIGNATURE
STREET ADDRESS 1416 S. Flower Street	CITY, STATE, ZIP KA CA 90015

APPLICATION

EXHIBIT
32



BANK USE ONLY

	FUNDS RECEIVED		
	CASH		
	CHK ON	200,000.—	
	CHK ON		
	CHK ON		
(A)	TOTAL REC'D	200,000.—	
	COSTS		
	TOTAL CHKS ISSUED	1	✓
	BANK CHARGES	AA	
(B)	TOTAL COSTS	200,000.—	
(A-B)	LESS CASH TO CUSTOMER		

2100 18239

CUSTOMER SIGN HERE FOR RET'D CASH

TELLER STAMP

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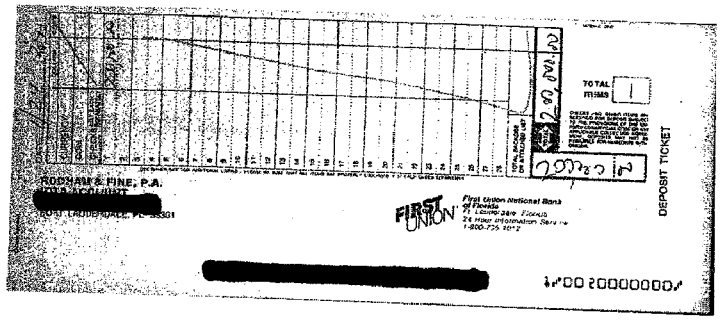

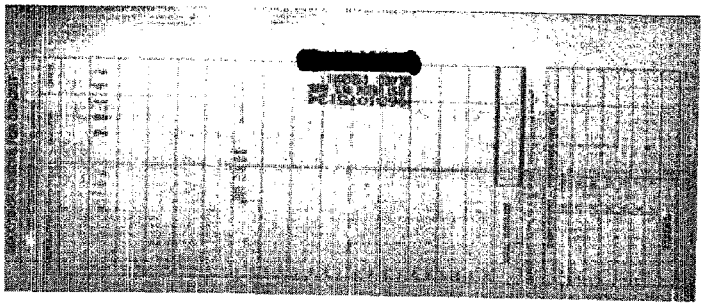

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JOB 00345 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

EXHIBIT
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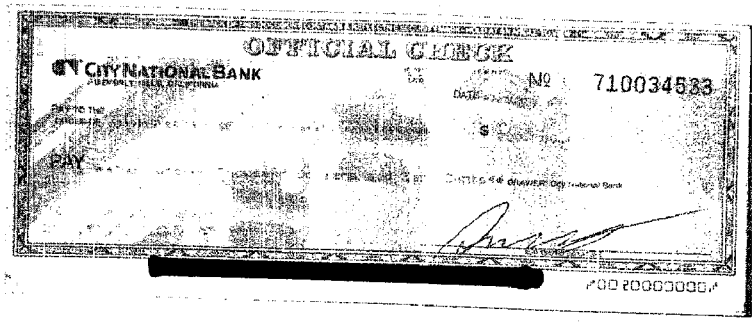

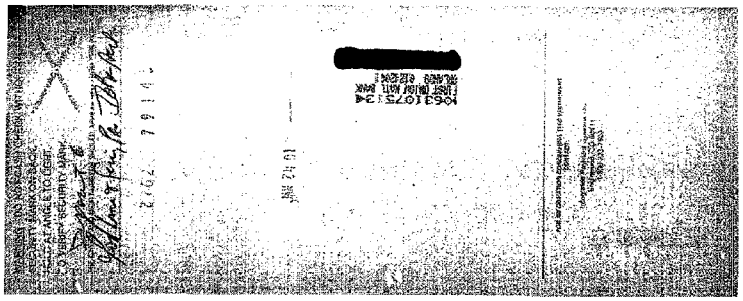

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JOB 00345 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

CITY NATIONAL BANK

BUSINESS ACCOUNT AGREEMENT

GENERAL ACCOUNT INFORMATION

Account Holder(s) ("Customer") / dba: MORVIS CORVIS CORPORATION, DBA TACO GRILL

Type of Account: Analyzed Business Checking Account Number: [redacted]

Business Address: 1416 S FLOWER ST LOS ANGELES, CA 90015

Mailing Address: (if different from above)

Telephone: (B) (213)746-7595 E-Mail / Fax:

MINIMUM NUMBER OF AUTHORIZED SIGNATURES REQUIRED FOR WITHDRAWALS: 1

Signature Message Code: NONE

OFAC REVIEWED

TAXPAYER INFORMATION

BY SIGNING THE AGREEMENT BY CUSTOMER BELOW, I/WE DECLARE UNDER PENALTY OF PERJURY THAT TH CORRECT TAXPAYER IDENTIFICATION NUMBER OF THE ACCOUNT HOLDER TO BE USED FOR TAX REPORTIN PURPOSES IS: [redacted]

THE ACCOUNT HOLDER IS NOT SUBJECT TO BACKUP WITHHOLDING BECAUSE OF UNDERREPORTING OF INTEREST OR DIVIDENDS AND IS A U.S. PERSON (INCLUDING A U.S. RESIDENT ALIEN), UNLESS CHECKED HERI

☐ I/We are subject to backup withholding and have not been notified by the Internal Revenue Service that backup withholding has been terminated.

NON-RESIDENT ALIENS AND FOREIGN ENTITIES (Check here only if applicable):

☐ I/We are exempt from backup withholding and information reporting. An appropriate IRS Form W-8, foreign status certification, has been completed.

Government Regulation may require that CNB report interest income information.)

RESOLUTION

RESOLVED: The President, any Vice President, the Secretary and/or the Treasurer of this Company is authorized to enter into deposit account, fund transfe brokerage, investment, cash management and deposit service agreements with City National Bank or City National Securities, Inc., and to designate from tim to time who is authorized to withdraw funds, initiate payment orders and otherwise give instructions on behalf of this company with respect to its deposit ar brokerage accounts. **RESOLVED FURTHER:** This authorization is in addition to any other authorizations in effect and shall remain in full force until Ci National Bank and City National Securities, Inc. receive written notice of its revocation at the address(es) and in the manner designated by them.

Certification by Secretary: I certify that: (1) I am the Secretary or Assistant Secretary of the Company named above; (2) the foregoing Resolution is complete and accurate copy of a Resolution duly adopted by the Company's Board of Directors (or by the Company's members if it is an unincorporate association); (3) the Resolution is in full force and has not been revoked or changed in any way; and (4) the signature(s) in the "Agreement by Customer" an "Authorized Signers" sections of this form are the genuine signatures of the person(s) authorized to take action by the Resolution.

SIGN HERE → Lily C. Vignali 3-5-01

Signature of Secretary or Assistant Secretary LILY C. VIGNALI Date

AGREEMENT BY CUSTOMER

By signing below, Customer confirms that it has received and agrees that its account will be governed by the authorizations set forth above, the terms a conditions, and the schedule of fees it received when opening this account and thereafter. The person(s) listed as Authorized Signer(s) on this form authorized to withdraw funds, initiate and confirm payment orders pursuant to the security procedure selected, and otherwise give instructions on behalf of Customer with respect to its deposit accounts. Customer agrees that any Authorized Signer may establish additional accounts in the same name(s) and with same signature requirements as set forth on this Agreement. Customer agrees to be bound by the terms and conditions and fees and charges as they relate products selected and/or used by Customer.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avo backup withholding.

IGN HERE → Signature: Horacio Vignali

[redacted] Name/Title: HORACIO C. VIGNALI, PRESIDENT

Date:

EXHIBIT 34

SIGN IN BLACK INK ONLY

BACCTAGR - rev. 6/00

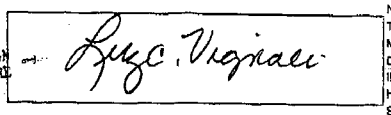
ACCOUNT TITLE MORVIS CORVIS CORPORATION, DBA TACO GRILL

ACCOUNT NUMBER 020240172



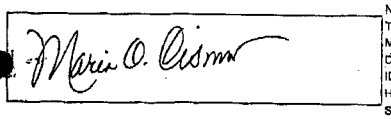
Name: HORACIO C VIGNALI
Title: President (125)
Mother's Maiden Name: ALVAREZ
DoB & Birthplace: [redacted]
ID & SS#: [redacted]
Home & Business Phone: [redacted] (B) (213)746-7595
Signature Message:

Home Address: 28854 VIA VENEZIA MALIBU, CA 90265
Occupation: OWNER
Employer Name / Address: MORVIS CORVIS CORP 1416 S. FLOWER ST. LOS ANGELES, CA 90015



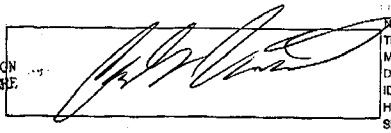
Name: LUZ C VIGNALI
Title: VP (126)
Mother's Maiden Name: MALDONADO
DoB & Birthplace: [redacted]
ID & SS#: [redacted]
Home & Business Phone: [redacted] (B) (213)746-7595
Signature Message:

Home Address: 28854 VIA VENEZIA MALIBU, CA 90265
Occupation: OWNER
Employer Name / Address: MORVIS CORVIS CORP 1416 S. FLOWER ST LOS ANGELES, CA 90015



Name: MARIA O CISNEROS
Title: OFFICE MANAGER (057)
Mother's Maiden Name: CRUZ
DoB & Birthplace: [redacted]
ID & SS#: [redacted]
Home & Business Phone: [redacted] (B) (213)746-7595
Signature Message:

Home Address: 3852 EAGLE ST LOS ANGELES, CA 90063
Occupation: OFFICE MANAGER
Employer Name / Address: MORVIS CORVIS CORP 1416 S. FLOWER ST. LOS ANGELES, CA 90015



Name: CARLOS A VIGNALI
Title: Authorized Signer (057)
Mother's Maiden Name: MALDONADO
DoB & Birthplace: [redacted]
ID & SS#: [redacted]
Home & Business Phone: [redacted] (B) (213)746-7595
Signature Message:

Home Address: 28854 VIA VENEZIA MALIBU, CA 90265
Occupation: GENERAL MANAGER
Employer Name / Address: MORVIS CORVIS CORP. 1416 S. FLOWER ST. LOS ANGELES, CA 90015

ACCOUNT TITLE MORVIS CORVIS CORPORATION, DBA TACO GRILL,

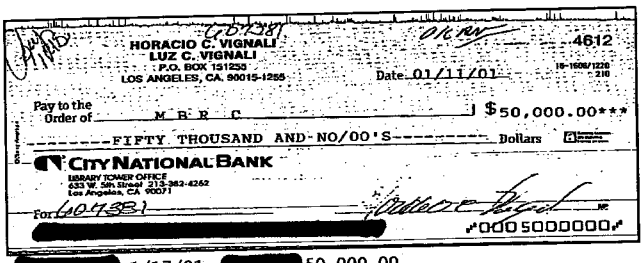
ACCOUNT NUMBER 020240172

BANK USE ONLY

Today's Date / Time 02/28/2001 12:39PM	Opened By Cecilia Diego	Opening Deposit $5,000.00 CNE Transfer
Supercedes Card Dated 02/01/2001	Superceded By CECILIA DIEGO	Cash Amount $ -0-
Existing Customer, Officer: 01632	CIS Clearance (~~not used~~ / cleared / ~~not cleared~~) Supervisor override Not Used	ChexSystem Clearance Existing Customer, Officer: 01632
Original Opening Date 02/01/2001	Reviewed By	ChexSystem Report Filed?
Date Closed 4/13/01	Reason Closed	SIGNATURE VERIFIED BY:

ADDITIONAL ACCOUNTS
Customer authorizes the following additional accounts:

ACCOUNT INFORMATION		OPENED		REVIEWED BY	DATE CLOSED	CLOSING REASON
TYPE	ACCOUNT NO.	DATE	BY			



HORACIO C. VIGNALI
LUZ C. VIGNALI
P.O. BOX 151255
LOS ANGELES, CA. 90015-1255

4612

Date 01/11/01

Pay to the Order of M B R C $50,000.00***

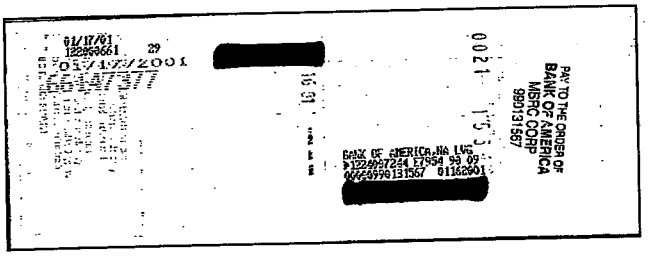
FIFTY THOUSAND AND NO/00'S Dollars

CITY NATIONAL BANK
LIBRARY TOWER OFFICE
633 W. 5th Street 213-362-4262
Los Angeles, CA 90071

For 604381

[redacted] 0005000000

[redacted] 1/17/01 [redacted] 50,000.00

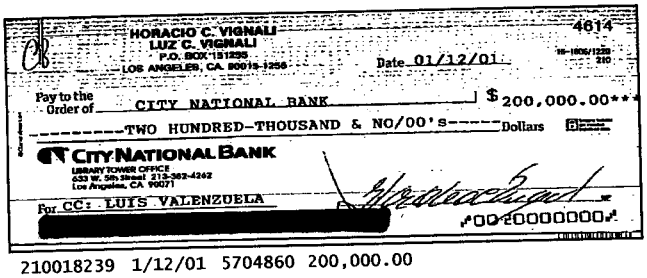


01/17/01
122869661 29
01/17/2001
66147377

[redacted]

PAY TO THE ORDER OF
BANK OF AMERICA
MBRC CORP
990131567

BANK OF AMERICA,NA LVG
[redacted]



HORACIO C. VIGNALI
LUZ C. VIGNALI
P.O. BOX 151255
LOS ANGELES, CA. 90015-1255

4614

Date 01/12/01

Pay to the Order of CITY NATIONAL BANK $200,000.00***

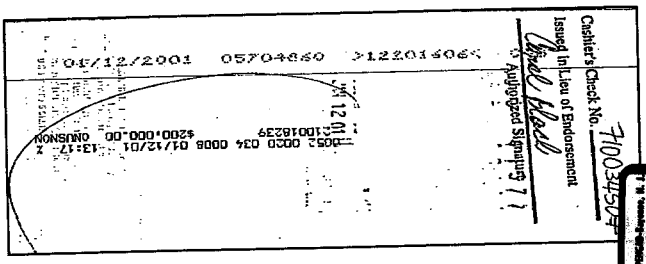
TWO HUNDRED-THOUSAND & NO/00's Dollars

CITY NATIONAL BANK
LIBRARY TOWER OFFICE
633 W. 5th Street 213-362-4262
Los Angeles, CA 90071

For CC: LUIS VALENZUELA

[redacted] 0020000000

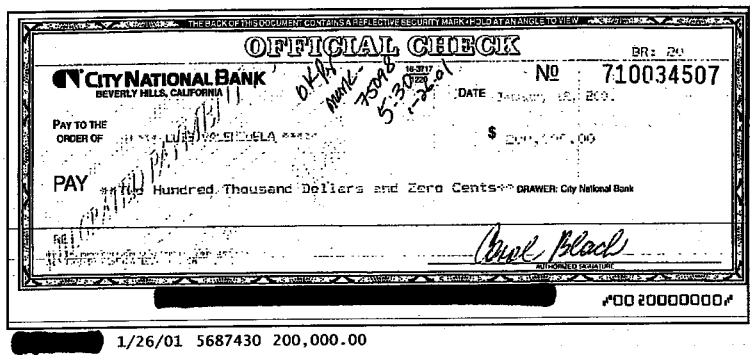
210018239 1/12/01 5704860 200,000.00



01/12/2001 05704860 >122016064

Cashier's Check No. 710034507
Issued In Lieu of Endorsement
Authorized Signature

EXHIBIT
35



THE BACK OF THIS DOCUMENT CONTAINS A REFLECTIVE SECURITY MARK - HOLD AT AN ANGLE TO VIEW

OFFICIAL CHECK

BR: 20

CITY NATIONAL BANK
BEVERLY HILLS, CALIFORNIA

16-3717
1220

№ 710034507

DATE January 18, 200

PAY TO THE ORDER OF [illegible] LUIS [illegible] ELA [illegible]

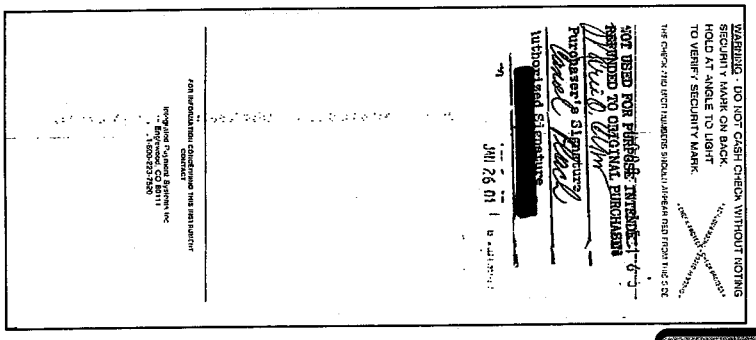
$ 200,000.00

PAY **Two Hundred Thousand Dollars and Zero Cents** DRAWER: City National Bank

Carol Black
AUTHORIZED SIGNATURE

[redacted] ⑈0020000000⑈

[redacted] 1/26/01 5687430 200,000.00



WARNING - DO NOT CASH CHECK WITHOUT NOTING SECURITY MARK ON BACK. HOLD AT ANGLE TO LIGHT TO VERIFY SECURITY MARK.

THE CHECK HAS BEEN NOT NUMBERS SHOULD APPEAR RED FROM THIS SIDE

NOT USED FOR PURPOSE INTENDED
REFUNDED TO ORIGINAL PURCHASER

Carol Black
Purchaser's Signature

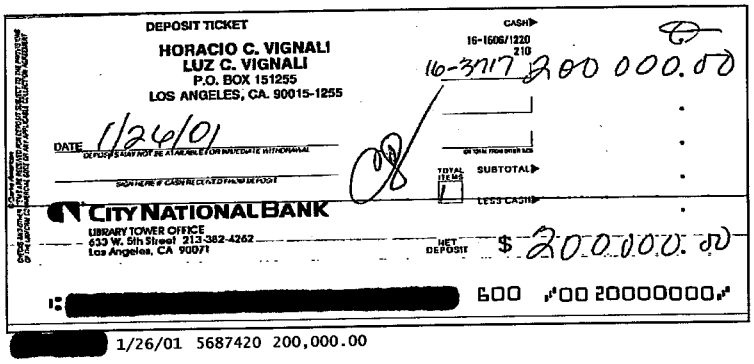
Authorized Signature [redacted]

JAN 26 01

FOR INFORMATION CONCERNING THIS INSTRUMENT CONTACT

Integrated Payment Systems Inc
Englewood, CO 80111
1-800-223-7520

EXHIBIT



DEPOSIT TICKET

HORACIO C. VIGNALI
LUZ C. VIGNALI
P.O. BOX 151255
LOS ANGELES, CA. 90015-1255

CASH
16-1606/1220
210
16-3717 200 000.00

DATE 1/26/01
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

SIGN HERE IF CASH RECEIVED FROM DEPOSIT

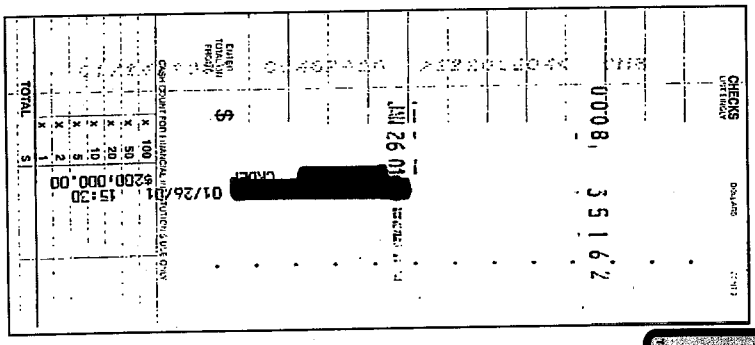
TOTAL ITEMS 1
SUBTOTAL
LESS CASH

CITY NATIONAL BANK
LIBRARY TOWER OFFICE
633 W. 5th Street 213-382-4262
Los Angeles, CA 90071

NET DEPOSIT $ 200000.00

[redacted] 600 ⑈00 20000000⑈

[redacted] 1/26/01 5687420 200,000.00



CHECKS
LIFE ENDLY

0008 35162

DOLLARS

JAN 26 01

CASH COUNT FOR FINANCIAL INSTITUTION USE ONLY

ENTER TOTAL IN FRONT

$

CASH

[redacted] 01/26/01 15:30
$200,000.00

TOTAL $

EXHIBIT



Mel Reynolds	Bank fraud; wire fraud; false statements to financial institution; conspiracy to defraud U.S.; false statements to FEC (1997) (sentenced to 78 months in prison, 5 years supervised release, $20K restitution) projected for release in March 2003 (convicted while serving 5-year state sentence for child pornography, criminal sexual assault, and obstruction of justice – offenses relate to sexual relationship with 16-year-old campaign worker. State sentence expired in January 2000)	Offenses relate primarily to fraudulent loan applications he and his wife filed during 1st term in Congress b/c of financial difficulties. Used cash from union (Hotel and Restaurant Employees) that was intended for GOTV for down payment on house. In violation of FEC rules, spent money designated for state/local elections on fed campaigns. Seeks commutation that would transfer him to a halfway house so he can earn money to send to family, who have at times been on public assistance during his incarceration.	Significant Congressional interest; may be possible to transfer Sen. Durbin has spoken to POTUS; Reps. Danny Davis, Carrie Meek, Charles Rangel, Maxine Waters, James Clyburn, William Jefferson, former Rep. Ron Dellums, Chicago Alderman Edward M. Burke, Jesse Jackson, Kweisi Mfume have written in support of transfer US Atty opposes. Sentencing judge strongly opposes. DAG recommends denial of commutation (but does not object to transfer). Victim institutions do not object	Could use clemency power to xfer to halfway house
Carlos Vignali	Aiding and abetting distribution of cocaine; conspiring to manufacture, possess and distribute cocaine (1995) Sentenced to 175 months	Arg is he is not guilty -- loaned $25K to a friend, which he args was falsely interpreted to be part of drug conspiracy; aged 24 at time of offense, with no prior criminal record; args	Reps. Becerra, Torres ask for "every consideration" because parents are friends; Council of CA State Legislators also ask for consideration; Archbishop of LA supports; acc. to	

PENGAD-Bayonne,NJ
EXHIBIT
38

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PHOTOCOPY

	and 5 years' supervised release (to be released August 2007)	he had minor role	representatives, U.S. Atty in Minneapolis (who prosecuted him) supports; LA Sheriff Lee Baca and LA US Atty Alejandro Mayorkas support; Maria E. has inquired	
Harvey Weinig	Conspiracy to commit money laundering; misprision of felony (1996) (sentenced to 135 months in prison) Has served 56 months.	Assisted law partner in processing wire transfers for partner's client (whom partner claimed was legit. Businessman); partner's client was actually drug dealer; partner rec'd sentence reduction for gathering evidence against petitioner; misprision count was for failing to report kidnapping. Pleaded guilty, agreeing to sentencing range of 108-35 months. DAG has recommended denial.	Rep. By Reid Weingarten; through JDP; Harold Ickes	Pending

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1469

Carlos Vignali	**Conspiracy to distribute cocaine; using facilities in interstate commerce to promote a business enterprise involving narcotics; use of communication facility in controlled substance offense.** (1995) Sentenced to 175 months and 5 years' supervised release (to be released August 2007)	Arg is he is not guilty –loaned $25K to a friend, which he args was falsely interpreted to be part of drug conspiracy; aged 24 at time of offense, with no significant criminal record; args he had minor role; **DOJ states that petitioner was supplier for major cocaine distribution organization and has two 1989 convictions for fighting in public place and vandalism; 1990 arrest for corporal injury to spouse or cohabitant, dismissed.** **DOJ says U.S. Attorney strongly opposes.** **DOJ recommends denial.**	Reps. Becerra, Torres ask for "every consideration" because parents are friends; Council of CA State Legislators also ask for consideration; Archbishop of LA supports; acc. To representatives, U.S. Atty in Minneapolis (who prosecuted him) supports; LA Sheriff Lee Baca and LA US Atty Alejandro Mayorkas support; Maria E. has inquired	**Lean no**

PENGAD-Bayonne,N.J
EXHIBIT
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PHOTOCOPY

Steven Treleaven	Conspiracy to manufacture marijuana, manufacturing marijuana (1992) Sentenced to 20 years	Had prior cocaine conviction, so 10-year mandatory minimum was doubled; (grew 3698 plants); args he grew for brother who was suffering from AIDS	FAMM list	No other information **Need more**
Carlos Vignali	Aiding and abetting distribution of cocaine; conspiring to manufacture, possess and distribute cocaine (1995) Sentenced to 175 months and 5 years' supervised release (to be released August 2007)	Arg is he is not guilty --loaned $25K to a friend, which he args was falsely interpreted to be part of drug conspiracy; aged 24 at time of offense, with no prior criminal record; args he had minor role	Reps. Becerra, Torres ask for "every consideration" because parents are friends; Council of CA State Legislators also ask for consideration; Archbishop of LA supports; acc. to representatives, U.S. Atty in Minneapolis (who prosecuted him) supports; LA Sheriff Lee Baca and LA US Atty Alejandro Mayorkas support; Maria E. has inquired	**STAFF: mixed (?)**
Kim Allen Willis PENGAD-Bayonne,N.J. EXHIBIT 40	Aiding and abetting in the attempt to possess with intent to distribute 20 kilos of cocaine; conspiracy to possess with intent to distribute 5 kilos of cocaine (1990) Sentenced to 188 months (mandatory minimum)	First-time, nonviolent offender; sentencing judge recommends commutation (same judge who wrote on behalf of Serena Nunn, petitioner's co-defendant who received commutation in July 2000) b/c Willis also had minor role in drug ring; Circuit Judge Heaney, who heard	Local NAACP chapter supports; FAMM list	

CLINTON LIBRARY
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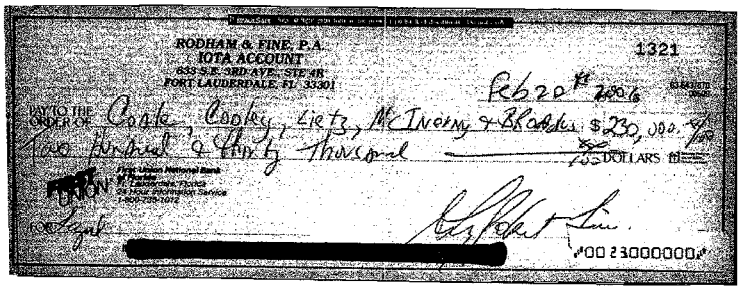

RODHAM & FINE, P.A.
IOTA ACCOUNT
633 S.E. 3RD AVE., STE 4R
FORT LAUDERDALE, FL 33301

1321

Feb 20 # 2006

PAY TO THE ORDER OF Coale, Cooley, Lietz, McInerny & Brooks $230,000.00/100

Two Hundred & Thirty Thousand 00/100 DOLLARS

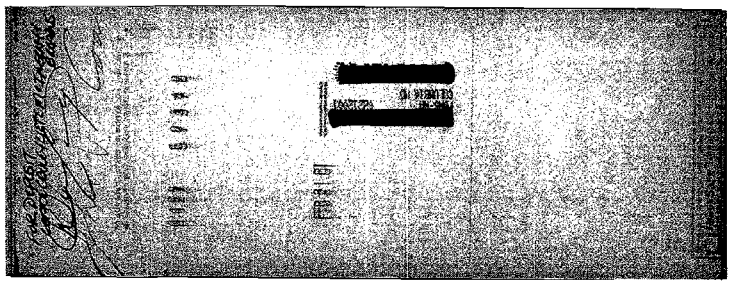
FIRST UNION

First Union National Bank of Florida
Ft. Lauderdale, Florida
24 Hour Information Service
1-800-720-1072

FOR Legal

[redacted]

⑈00 23000000⑈


[redacted]

REQUEST[redacted] 230000.00
ROLL *SEQER [redacted]
JOB 00311 P ACCT[redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

EXHIBIT
41

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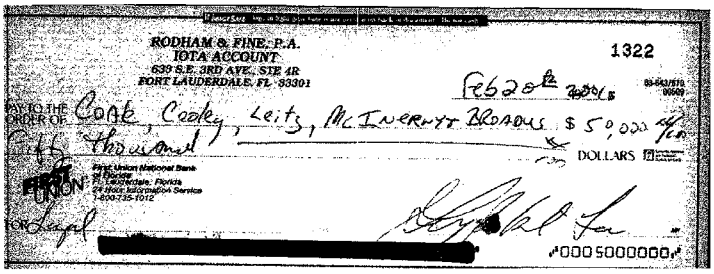

RODHAM & FINE, P.A.
IOTA ACCOUNT
633 S.E. 3RD AVE., STE 4R
FORT LAUDERDALE, FL 33301

1322

Feb 20th 2001

PAY TO THE ORDER OF Coak, Cooley, Leitz, McInerney Broadus $ 50,000 00/100

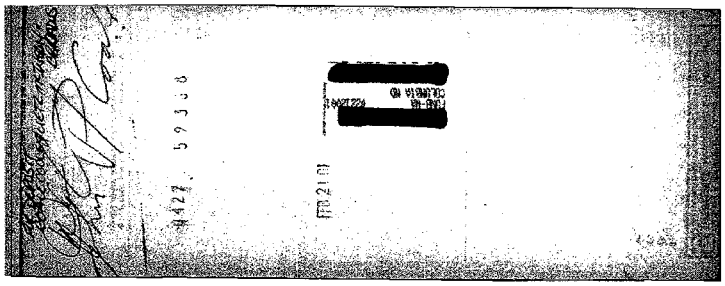
Fifty thousand DOLLARS

First Union National Bank of Florida
Ft. Lauderdale, Florida
24 Hour Information Service
1-800-735-1012

FIRST UNION

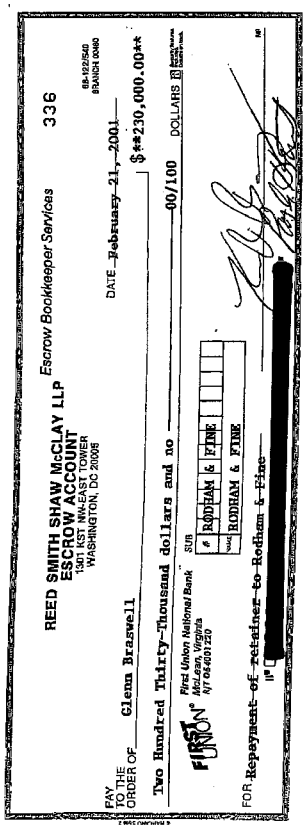
FOR Legal [redacted]

⑈0005000000⑈


[redacted]

REQUEST [redacted] 50000.00
ROLL *SEQER [redacted]
JOB 00311 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999



REED SMITH SHAW McCLAY LLP
ESCROW ACCOUNT
1301 KST NW-EAST TOWER
WASHINGTON, DC 20005

Escrow Bookkeeper Services

336

68-122/540
BRANCH 00460

PAY TO THE ORDER OF Glenn Braswell

DATE February 21, 2001

$**230,000.00**

Two Hundred Thirty-Thousand dollars and no 00/100 DOLLARS

FIRST UNION
First Union National Bank
McLean, Virginia
N/T 054001220

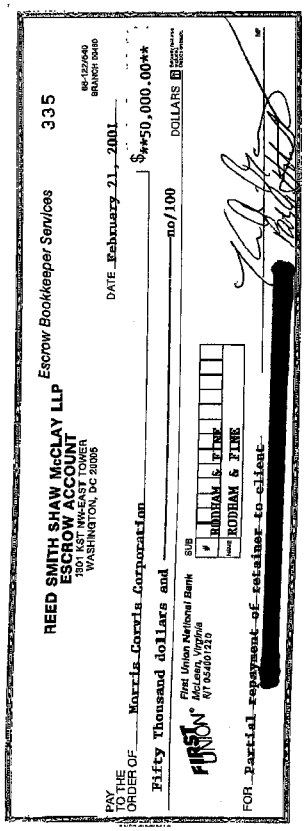
SUB
RODHAM & FINE
RODHAM & FINE

FOR Repayment of retainer to Rodham & Fine

[redacted]

PENGAD-Bayonne, N. J.

EXHIBIT
42



REED SMITH SHAW McCLAY LLP *Escrow Bookkeeper Services* 335
ESCROW ACCOUNT
1301 K ST NW EAST TOWER
WASHINGTON, DC 20005

DATE February 21, 2001

PAY TO THE ORDER OF Morris Corris Corporation $**50,000.00**

Fifty Thousand dollars and no/100 DOLLARS

First Union National Bank
McLean, Virginia
6/1 054001210

SUB # RODHAM & FINE
NAME RODHAM & FINE

FOR Partial repayment of retainer to client

EXHIBIT
43

ReedSmith LLP

Nancy Luque • 202.414.9408 • nluque@reedsmith.com

February 21, 2001

Carlos Vignali
Morris Corvis Corporation
Post Office Box 151255
Los Angeles, CA 90015

Dear Mr. Vignali:

Enclosed please find partial repayment of your retainer to Rodham and Fine. A check for the balance will be forwarded directly.

If you have any questions, please do not hesitate to call me.

Sincerely,

Nancy Luque

Enclosure

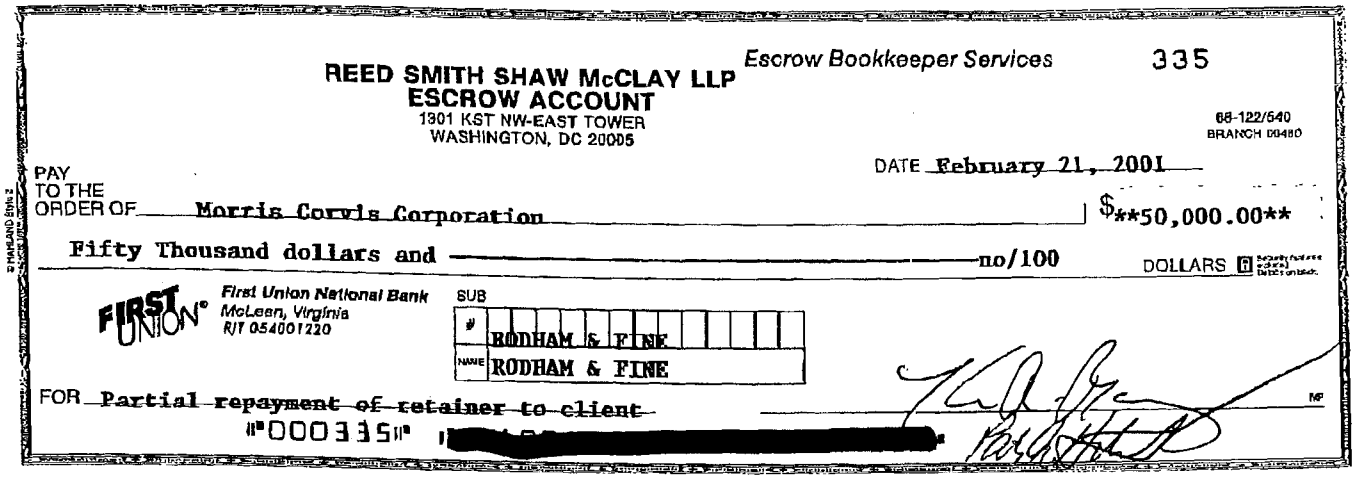
1301 K Street N.W.
Suite 1100 - East Tow
Washington, D.C. 20005-33
202.414.92
Fax 202.414.92

Delaware

reedsmith.com

EXHIBIT 44

"Reed Smith" refers to Reed Smith LLP and related entities.



REED SMITH SHAW McCLAY LLP
ESCROW ACCOUNT
1301 K ST NW-EAST TOWER
WASHINGTON, DC 20005

Escrow Bookkeeper Services

335

68-122/540
BRANCH 00480

DATE February 21, 2001

PAY
TO THE
ORDER OF Morris Corvis Corporation

$**50,000.00**

Fifty Thousand dollars and no/100 DOLLARS

FIRST UNION
First Union National Bank
McLean, Virginia
R/T 054001220

SUB
#
NAME RODHAM & FINE

RODHAM & FINE

FOR Partial repayment of retainer to client

⑈000335⑈ [redacted]

MP

THE FLORIDA BAR
CYPRESS FINANCIAL CENTER, SUITE 835
5900 NORTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33309

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

954/772-2245

July 16, 2001

J. Christian Adams, Esq.
4160 Chain Bridge Road
Fairfax, Virginia 22030

Re: Florida Bar Investigation of Hugh E. Rodham
TFB Case No. 2001-71,048(17H)

Dear Mr. Adams:

You, along with several others, filed a complaint with The Florida Bar in response to the media reports of Hugh Rodham's role in two pardons granted by former President Clinton. This matter was reviewed by Florida Bar staff counsel and then referred to a Florida Bar grievance committee for further consideration.

Florida Bar grievance committees consist of volunteer members, one third of whom must be members of the public. The lawyers who serve on grievance committees must have been licensed for five years. Grievance committees consider evidence and make recommendations as to the appropriate resolution of a case. After considering the available evidence and potential rule violations in this case, the grievance committee, including members of the public, unanimously voted to close the case without further proceedings. Therefore, The Florida Bar will not continue with its investigation at this time. The reasons are set forth below.

I.–Procedural History of this Investigation.

Rule 3-7.3(c), Rules Regulating The Florida Bar, provides that The Florida Bar may initiate investigations in its name, even if no complaint has been filed. The media reported Mr. Rodham's involvement with these matters, and his fees, late in the day on February 21, 2001. On February 22, 2001, The Florida Bar opened a file to begin gathering information. In the days and weeks that followed, The Florida Bar received several complaints about Mr. Rodham's reported conduct. Because of the number of complaints, the fact that the complaints all contained similar allegations, and because none of the complainants had firsthand knowledge of the underlying facts, a determination was made to continue this investigation in the name of The Florida Bar. No additional files were opened, but instead, all complaints were merged into a single master file for investigation. To the best of our knowledge, all persons who filed a complaint were advised that we would be pursuing the investigation in the name of The Florida Bar.

EXHIBIT
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Sent By: Adams Law Firm; 703 591 8865; Jul-30-01 12:55PM; Page 4/11

When The Florida Bar receives a complaint against an attorney, the staff counsel to whom the case is assigned conducts a preliminary review to determine if sufficient allegations have been made to proceed with that complaint. If the allegations against an attorney, taken as true, would constitute a violation of our rules, we then open a disciplinary file and conduct an investigation.

In the present case the media reports contained significant undisputed information. What appeared to be undisputed is that Hugh Rodham took $200,000.00 each for two matters in which an individual previously convicted of criminal charges received a pardon from then-president Clinton. It also appeared undisputed that the fees were received after the pardons were granted, and therefore that Mr. Rodham handled these matters on a contingency basis.

The circumstances surrounding Mr. Rodham's involvement were curious at best. It was suggested that Mr. Rodham performed very cursory services for these individuals, if any. This raised questions about whether the monies were paid simply for services rendered (and thus were excessive fees) or for some other purpose (as a payoff to someone involved in the process). It was also suggested that Mr. Rodham did not follow the proper procedures for submitting a pardon request.

Although we had not been provided evidence of any improprieties of this type, the nature of the questions raised were such that it was appropriate to pursue an investigation. We opened a disciplinary file and requested a response from Mr. Rodham. He responded through his attorney. We conducted research into the legal issues involved. We attempted to gather additional facts. Then we referred the case to a Florida Bar grievance committee for further consideration.

As stated above, Florida Bar grievance committees consist of one-third nonlawyers. Attorneys must have been licensed for five years before they are eligible to serve on a grievance committee. The grievance committee which considered this case unanimously decided to close the investigation, based on information available to date, and the grounds set forth below. If additional information comes to light that indicates Mr. Rodham violated our rules with regard to these pardons, we may reopen the file for additional investigation.

II.–Discussion of Issues Considered.

This situation raised two primary ethical concerns. The first concern was whether the fees were improper (whether the fees were excessive, and whether the prohibition against an attorney entering into a contingency fee agreement in a criminal matter would apply to a clemency matter). The second concern was whether Mr. Rodham engaged in dishonest conduct (whether the fees were bribes, whether Mr. Rodham violated rules or procedures relating to pardons, etc.).

A. Whether Mr. Rodham's Fees Were Improper.

The Florida Constitution provides that the Supreme Court of Florida shall have responsibility for regulating the practice of law. The Florida Bar, acting as an official arm of the court, carries out this responsibility. Attorney conduct is addressed by the Rules Regulating The Florida Bar. The practice of law generally is understood as assisting another in judicial proceedings, or providing legal assistance in matters affecting important rights of another. One must be licensed as an attorney in Florida to practice law in Florida, as the term "practice law" is generally understood. By way of contrast, persons not licensed to practice law are sometimes expressly permitted by administrative codes and rules to render assistance in non-judicial proceeding. It is the prerogative of the executive and legislative branches of government to establish provisions whereby those who are not licensed as attorneys may provide representation or other assistance, which, if carried out in a judicial proceeding, might be the improper practice of law.

The clemency process is not a judicial proceeding, either at the state or federal level. Persons charged with criminal activity are tried (if they contest the charges) and sentenced (if convicted) by a lower court. Once convicted, persons who choose to appeal do so to a higher court or court of appeal. In Florida, as in most states, and as in the federal system, a supreme court exists with authority over all of the courts of appeal. Clemency does not involve assistance before any court. Rather, it is a plea to the chief executive --- another branch of government --- to grant a pardon or alter the sentence imposed. It is not an action founded in errors of law, but rather an appeal to the mercy of the chief executive.

It is important to remember that the primarily goal of The Florida Bar's lawyer regulation department is to protect the public. In this case the persons who paid the fees did not complain. Virtually all of the complaints of excessive attorneys' fees filed with The Florida Bar come from interested parties. Most are clients. Some hired an attorney, and then the attorney charged for time not spent or for unnecessary work. Others hired an attorney, paid a fee, and the attorney failed to perform suitable services, yet would not refund the fee. In other instances, the opposing party complains when they have lost a case, and the prevailing party's attorney seeks what they believe to be unreasonable fees. It would be highly unusual for The Florida Bar to become involved in a determination of reasonableness of attorneys' fees in the absence of a complaint of an interested party, one who actually suffered harm directly. We may consider doing so when a compelling public interest arises. The grievance committee that considered this case did not find a compelling public interest in the matters involved.

Contingency fees are prohibited in criminal cases. The primary reason is that contingency fees generally are allowed only when there is a recovery from which to take a fee. The typical contingency fee case involves the recovery of damages, where the successful plaintiff receives a judgment or settlement in a specified amount. The fee agreement for such a case would provide for fees based on the recovery. The goal of both attorney and client are served by the attorney

seeking a maximum recovery. As an additional policy consideration in criminal cases, contingency fees are prohibited because the constitutional right to competent counsel should not be tied to the compensation paid to the attorney.

As discussed above, however, clemency is different from other post-conviction avenues of appeal. It cannot be said that, based on existing rules and ethics opinions, accepting a contingency fee for assistance in a clemency proceeding is improper *per se*.

B. Whether Mr. Rodham Engaged in Dishonest Conduct.

A Florida-licensed attorney who engages in conduct prejudicial to the administration of justice in connection with the practice of law is subject to discipline under our rules. A Florida-licensed attorney who engages in criminal misconduct, deceit, or other dishonest conduct is subject to discipline, regardless of whether the conduct is deemed to be in connection with the practice of law. There has been no evidence presented or made available to The Florida Bar: 1) that Mr. Rodham violated rules or procedures relating to the pardons in question; 2) that monies were intended as improper payment to persons involved in the pardon process; or 3) that there was any other deceit or dishonesty on his part. The media has reported that the Department of Justice, through the United States Attorney's Office for the Southern District of New York, is investigating many, if not all, of the Clinton pardons. The Department of Justice is the appropriate agency to undertake the investigation of whether Mr. Rodham followed the pardon process properly or engaged in any improper conduct with regard to the pardon process.

Although The Florida Bar has an excellent cooperative relationship with all types of law enforcement agencies, confidentiality laws do not allow the Department of Justice to disclose anything about an investigation, even to the point of confirming if an investigation is ongoing. We attempted to obtain information from the Department of Justice in Washington, D.C., as well as the United States Attorney's Office for the Southern District of New York. Our requests were declined. We will request the Department of Justice to release any information relating to Mr. Rodham to us, if there is any such information, and when it becomes public. The Florida Bar has a six-year statute of limitations in which to pursue complaints against attorneys. If Mr. Rodham ultimately is found to have violated any laws with regard to these pardons, The Florida Bar will open a new file and seek discipline based on those findings.

III. – Conclusion.

The Florida Bar is not continuing with its investigation of Hugh Rodham at this time.

The Florida Bar does not endorse either the amount of the fees involved in these matters or the use of contingency fee agreements for clemency matters. Based on existing rules and ethics opinions, however, and for the reasons set forth above, it cannot be said that Mr. Rodham's fees were improper.

If you have questions regarding this matter, please submit them in writing, so that we may provide a complete and thorough response. Thank for you efforts in bringing your concerns to the attention of The Florida Bar.

Sincerely,

Barry W. Rigby
Chief Branch Disciplinary Counsel

BWR/ak

Sent By: Adams Law Firm; 703 591 5863; JUL-30-01 12:58PM; Page 8/11

J. CHRISTIAN ADAMS
ATTORNEY AT LAW

4160 Chain Bridge Road
Fairfax, Virginia 22030
Practicing in VA and SC

phone 703.535.1580
fax 703.591.5863
jcadams@erols.com

VIA FIRST CLASS MAIL
February 22, 2001

Mr. Barry W. Rigby, Esquire
The Florida Bar
Department of Lawyer Regulation
Cypress Financial Center
5900 N. Andrews Avenue
Suite 835
Ft. Lauderdale, Florida 33309

RE: Formal Ethics Complaint; Mr. Hugh Rodham, Esquire.

Dear Mr. Rigby:

I am hereby submitting a formal ethics complaint against Mr. Hugh Rodham, Esquire. Mr. Rodham is an attorney licensed to practice law in the State of Florida. He has offices at Rodham & Fine, P.A., 633 Southeast Third Avenue Suite 4R, Fort Lauderdale, Florida 33301. I believe there is evidence to demonstrate that Mr. Rodham violated two separate provisions of the Rules Regulating The Florida Bar. I believe Mr. Rodham has violated Rule 4-1.5(a)(1) and Rule 4-1.5(f)(3)(B).

Rule 4-1.5(a)(1) states "[a]n attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited or clearly excessive fee . . . "

Rule 4-1.5(f)(3)(B) states a "lawyer shall not enter into an agreement for, charge, or collect: (B) a contingent fee for representing a defendant in a criminal case."

Enclosed you will please find three news accounts from *The Los Angeles Times, The New York Times* and Fox News Channel's world wide web news site. All of the articles involve Mr. Rodham's acceptance of $400,000 in legal fees for his representation obtaining clemency for Messrs. Carlos Vignali and Almon Glenn Braswell. You will note that the *New York Times* reports that the money was wired to the "account of Mr. Rodham's Florida law firm on January 22" so it appears he was serving in his capacity as a member of the Bar.

Fox News reports in the enclosed article (www.foxnews.com/politics/022201/Clinton_relative.sml) that Mr. Rodham "received hefty contingency payments for securing a pardon for Almon Glenn Braswell, a businessman convicted of fraud. . ." The same news account characterizes the payment as "a 'success fee' for helping win Braswell's pardon." *The Los Angeles Times* account (http://www.latimes.com/news/front/ 20010222/t000015792.html) also characterizes the legal fees as "a success

ent By: Adams Law Firm; 703 591 5863; Jul-30-01 12:58PM; Page 9/11

fee." And finally, the ex-President issued a formal statement which was reported in *The New York Times* (http://www.nytimes.com:80/2001/02/22/politics/22PARD.html) that Mr. Rodham "received a contingency fee in connection with a pardon application. . . ." It would appear that Mr. Rodam's actions are subject to disciplinary sanctions.

In Ethics Opinion 80-5, the Florida Bar Committee unanimously ruled that acceptance of a contingency fee was prohibited in obtaining post conviction relief. Moreover, in this same Ethics Opinion, the Committee discussed Ethical Consideration 2-20, noting that "[p]ublic policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a *res* with which to pay the fee." In Mr. Rodham's case, Mr. Rodham was representing a client in a situation not unlike post conviction relief. Lastly, there was similarly no *res* and thus the underlying justification for prohibiting a contingent fee was present in his case.

Finally, it would appear that Mr. Rodham "collect[ed] . . . a clearly excessive fee." *Citing*, Rule 4-1.5(a)(1). Note that *The Los Angles Times*, states that Mr. Rodham collected "$200,000 for making at least two phone calls to the White House and for other work on Vignali's behalf." While it would appear that Mr. Rodham may have brought unique characteristics and background to his role as pardon attorney, it is hard to imagine a circumstance where Rule 4-1.5(a)(1) is more clearly violated. Obviously, this is a fact sensitive issue and would seemingly depend on a thorough review of Mr. Rodham's work product, file and billing records. It may be that Mr. Rodham's personal access to the ex-President may be the only attribute that could cause this otherwise preposterous $400,000 fee to be ethical. *See generally*, Rule 4-1.5(b) (discussing safe havens where standards are applied to justify fees).

Finally, let me note my motivation for filing this complaint. I am a solo practitioner tired of hearing jokes, criticisms and complaints about the practice of law. Most of all, I take my ethical obligations seriously. My license and my reputation are all I have to support myself. In fact, I probably have much more to lose than to gain by filing this complaint. I have seen others who have filed similar complaints be attacked and criticized. But I simply feel that when the unethical conduct of those admitted to the bar dominate national headlines, month after month, year after year, our system is harmed. When the same unethical conduct goes unpunished, month after month, year after year, the system itself is jeopardized.

I look forward to hearing about the progress of my complaint. Call me if you have any questions. Under penalty of perjury, I declare the foregoing facts are true, correct and complete.

Sincerely,

J. Christian Adams

Enclosures

INSIDE THE BELTWAY

Bang, you're dead

"Let us, for a moment, take the sex-education pushers at their word: If you teach a child how to use a condom, you're promoting safety — not usage. Why, then, doesn't the same logic apply to guns?"

— Syndicated columnist Michelle Malkin

Rabid reporters

The U.S. Postal Service says it's been bitten by the press.

"When it rains, it pours," says the USPS, denying it's up to its knees in "waste, fraud and abuse" to the tune of $1.4 billion — as was widely reported recently by the media.

So where, then, did the widely circulated figure come from?

The USPS guesses that a careless reporter or two misunderstood a statement by the USPS Office of Inspector General, which identified potential savings and cost avoidances of — you guessed it — $1.4 billion.

Biting the hand

How are you planning to spend your tax-rebate check? How about spending it to "fight back" against the guy who made it happen?

That's what one Marxist group is asking its supporters to do.

"President Bush is bribing us with his new $300-plus tax return," declares the International Action Center (IAC), a Marxist protest organization associated with the Workers World Party. "However, this will not fool us — let's use this money instead to fight back."

The IAC is "asking our friends to donate their tax return and use that money to bring an end to the Bush program" by joining the "Committee of 200," which will fund the September protests here in Washington against the International Monetary Fund and the World Bank.

The IAC wants its supporters to send contributions to pay for a "week of teach-ins, direct action, and rallies," to say nothing of massive traffic tie-ups for Washington commuters.

In case you were wondering, the IAC makes clear that these contributions are — what else — "completely tax-deductible."



NBC's Matt Lauer received even more second-guessing after his response to a critic.

No place like home

Subscribers overwhelmed our mailbox after reading NBC "Today" show host Matt Lauer's response to a Washington marketing and public relations executive who had questioned the host's "aggressive tactics" and "rude behavior" toward first lady Laura Bush during an interview last Monday.

"You wouldn't know my 'personal political beliefs' if they landed on your head," Mr. Lauer fired back at his critic. "How dare you pretend to know my political background. Must be nice to sit at home and second-guess what others do for a living."

Wonders Thora Nykamp of Twinsburg, Ohio: "Where would you suggest, other than sitting at home, that we watch you 'not' second-guessing ... [illegible]

Case not closed

More now on the Florida Bar's five-page decision that Hugh Rodham, brother of Hillary Rodham Clinton, did not violate ethics rules by lobbying (for a whopping fee of $400,000) President Clinton for clemency for two of his clients convicted of felonies.

The bar's ruling was submitted to Fairfax attorney J. Christian Adams, who along with several others had filed the complaint after it was discovered that Mr. Rodham lobbied his brother-in-law on behalf of the two felons — one a cocaine dealer, the other a money launderer.

Astounded by the recent ruling, Mr. Adams late last week reminded the Florida Bar that the basis of his original complaint "was that a lawyer may not take a contingency fee in a criminal matter."

However, the bar tried explaining in its ruling that because of confidentiality laws, it had "not been provided evidence" by the U.S. Justice Department and U.S. Attorney's Office on whether any wrongdoing had occurred.

Therefore, the bar concluded, it had no choice but to decide that no ethics rules were violated.

"Did the Florida Bar not conduct its own fact-finding in this matter?" Mr. Adams is now asking the bar. "If not, the following might be a good place to start your own fact inquiry:

- "Were the fees, which you concede were contingency fees, paid to Mr. Rodham's firm?
- "Were the files on the clemency cases reviewed?
- "Were the files reviewed kept at Mr. Rodham's law firm and kept in the regular course of business of that firm?"
- "Did the files include letterhead or other pleadings or submissions noting they were produced by Mr. Rodham's firm?
- "Were the contingency fees deposited into the firm's account?

"Please keep me apprised."

• John McCaslin, a nationally syndicated columnist, can be reached at 202/636-3284 or e-mail

Bush has e

By Jerry Seper
THE WASHINGTON TIMES

Little opposition today when the Se Committee begins hearings for veteran ment prosecutor Ro III to head the emba

Mr. Mueller, a f Corps officer who s nam and won the B the Purple Heart, al praise from commit and Republicans as t believe can bring ac the federal agency.

President Bush, w Mr. Mueller earlier t ing a Rose Garde already has given hin orders: "The FBI has tion Mr. Mueller mu and some important must confront."

Mr. Bush said he the no-nonsense fo deputy attorney gen attorney in San Franc for the job.

"As a lawyer, prose ernment official, he h ideals, a clear sense o a tested devotion t Mr. Bush said. "Bob M rience and character he's ready to shoulder sibilities."

While his nominat jeopardy, the committ ly question him on ho to run the FBI, already a series of public emb including the arrest o eran FBI Agent Rober as a Russian spy and turn over 4,000 pages to prosecutors and d

Today's c

NEW YORK (AP) — icans believe childre spoiled than they usec two-thirds of parent believe they spoil thei dren, according to a p yesterday.

The poll, conducte magazine and CNN, fo percent of 1,015 adult believed children toda

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U.S. Department of Justice
United States Attorney
Central District of California

Duncan DeVille
Assistant United States Attorney
Narcotics Section
t: 213-894-2692, f:213-894-0142

U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012
duncan.deville@usdoj.gov

March 2, 2001

Hon. Alejandro Mayorkas
United States Attorney
312 North Spring Street
Los Angeles, CA, USA 90012
VIA FACSIMILE

Dear Allie:

As an Assistant United States Attorney in the Narcotics Unit in Los Angeles, I frequently place in danger both my life and, more importantly the lives of law enforcement agents, in the pursuit of drug dealers. Accordingly, I cannot support your recent actions in assisting in the pardon of convicted cocaine trafficker Carlos Vignali.

In protest of your actions, I respectfully resign my position as Assistant United States Attorney in your office. This resignation will become effective sixty days from the date of this letter (the minimum time required by office policy).

Sincerely,

Duncan DeVille

Duncan DeVille
Assistant United States Attorney
Narcotics Section



PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

Please read accompanying instructions carefully before beginning. Typewrite or print the answers in ink. Each question must be answered fully, truthfully, and accurately. If the space for any answer is insufficient, petitioner may complete answer on a separate sheet of paper and attach it to the petition. Submission of material, false information is punishable by imprisonment of up to five years and a fine of not more than $250,000. 18 U.S.C. §§ 1001 and 3571.

TO THE PRESIDENT OF THE UNITED STATES:

The undersigned petitioner prays for a pardon and in support thereof states as follows:

1. Full name: ALMON (First) GLENN (Middle) BRASWELL (Last)

Address: [redacted] (Number) [redacted] (Street) MIAMI BEACH, FL (City) [redacted] (State) [redacted] (Zip Code)

Telephone Number (include area code): [redacted]

Social Security No. [redacted] Date and place of birth: [redacted] Albany, GA

Sex: M Height: 6'2" Weight: 185 Hair Color: Grayish/Brown Eye Color: Hazel

Are you a United States citizen? ☐ yes ☐ no If not, state nationality and give alien registration number: _____. If naturalized U.S. citizen, furnish date and place of naturalization: _____

State in full every other name by which you have been known, including name under which you were convicted, the reason for the use of another name, and the dates during which you were so known (for example, include your maiden name, name(s) by a former marriage(s), alias(es), and nickname(s)).

_____

Offense(s) For Which Pardon Is Sought

2. Petitioner was convicted on a plea of not guilty (guilty, not guilty, nolo contendere) in the United States District Court for the Northern (Northern, Western, etc.) District of Georgia (Identify State) of the crime of:

Violation of 18 U.S.C. Sec. 1623 (perjury); pled guilty to related charges of 18 U.S.C. Sec. 1341 (mail fra (Describe specific offense) and 26 U.S.C. Sec. 7201 (tax evasion).

and was sentenced on December 5, 1983, to ☐ imprisonment for three (3) years,

☐ probation for _____, ☐ a fine of $_____, and/or ☐ restitution of $_____.

Petitioner was _____ years of age when the offense was committed. (Investigation initiated in 1978 when Mr. Braswell was 26 years old and was pressed continuously through 1983).

3. Petitioner began service of the sentence of ☒ imprisonment ☐ probation on (or about) Feb. 15, 1984; was released on Aug. 20, 1984 from Lexington/FCI (Federal Institution); and was finally discharged by expiration of sentence on _____, 19__. Petitioner ☐ did ☒ did not appeal the conviction.

Indicate the date(s) on which the fine, restitution or special assessment was paid. If the fine, restitution, or assessment have not been paid in full, explain why. If appealed, please provide the date of decision(s) by the Court of Appeals and, if applicable, the Supreme Court. Please also provide citations to any published judicial opinion(s) or a copy of unpublished opinion(s). (An optional continuation page is provided.)

Not applicable while no direct appeal was ever taken; in 1977, Mr. Braswell sought to vacate the conviction based on the change in law manifested in United States v. Gaudin, 515 U.S. 506 (1995), through trial court and appellate proceedings that were rejected for reasons unrelated to Mr. Braswell's guilt or innocence.

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4. **Give a complete and detailed account of petitioner's offense(s), including dates (or time span) of the offense, names of codefendants and, when applicable, amount of money involved. Petitioner is expected to describe the factual basis of her/his offense completely and accurately and not rely on criminal code citations or name references only. If the conviction resulted from a plea agreement, petitioner should describe fully the extent of her/his total involvement in the criminal transaction(s), in addition to the charge(s) to which she/he pled guilty.**

Glenn Braswell, a scientist and business man, developed a line of vitamins and nutritional supplements that he marketed by direct mail and television commercials. As part of a fraud investigation into the racketeering activities of Salvatore Borriello, Mr. Braswell was subpoenaed to testify in front of a federal grand jury. Mr. Braswell was questioned about his relationship with Salvatore Borriello, a convicted felon.

18 U.S. 1623 (Perjury)

The government contended that Mr. Braswell testified under oath before a grand jury that he and Mr. Borriello did not engage in any business transactions other than a "deal for TV time." The government claimed that this statement was false because Mr. Borriello had in fact acted on behalf of Mr. Braswell and his companies by negotiating reductions in amounts owed by Mr. Braswell to magazines as a result of advertising performed by those publications for Mr. Braswell's benefit.

18 U.S.C. § 1623 (Tax Evasion)

Also, according to the government, Mr. Braswell engaged in a number of other transactions with Mr. Borriello where Mr. Braswell overpaid for corporate services performed by Mr. Borriello, who in return provided cash payments to Mr. Braswell. The cash transactions apparently were not reported as income to the IRS and resulted in an understatement of income by Mr. Braswell.

18 U.S.C. 1341 (Mail Fraud)

With respect to mail fraud, the government charged Mr. Braswell with having knowingly devised and intended to devise a scheme and artifice to defraud and obtain money and property, by means of false and fraudulent pretenses, representations and promises, and to induce persons to purchase certain products known as "Right Place."

It was part of the scheme to defraud that Mr. Braswell would place false and misleading advertisements in magazines throughout the United States and in his magazine, Body Forum, in order to acquaint readers with his products, falsely claiming that users of those products had experienced physical and cosmetic enhancements such as hair growth and breast enlargement.

Prior and Subsequent Criminal Record

5. **Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority, whether federal, state, local or foreign, either as a juvenile or adult for any incident, aside from the offense for which pardon is sought?** ☐ yes ☐ no

For each incident list date, nature of charge, factual circumstances, law enforcement authority involved, location, and disposition. You must list every violation, including traffic violations that resulted in an arrest or criminal charge; for example, driving under the influence. Any omission will be considered a falsification. (An optional continuation page is provided if necessary.)

On October 17, 1984, Mr. Braswell entered a nolo plea to Grand Theft in Broward County Court arising from a landlord tenant dispute in which Mr. Braswell, as landlord, allegedly entered the premises of his tenant. Because Mr. Braswell was at the time financially destitute, he chose not to contest the charge which was resolved by a sentence to run concurrently with the federal sentence, effectively eliminating any consequences to him beyond that imposed by his federal conviction. Incidentally, the state prosecutor stated himself that the prosecution "was not a good case...."

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Biographical Information

6. Current marital status: ☐ Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Separated
For each marriage give the following: name of spouse, date and place of spouse's birth, date and place of marriage, and, if applicable, date and place of divorce, and current or last known address and telephone number of each former spouse:

Susan Brown [redacted] Los Angeles, CA
name of spouse *date/place of birth*

Los Angeles, CA
full address including Zip code *telephone number, including area code*

[redacted](est.), Ft. Lauderdale, FL [redacted]
date/place of marriage *date/place of divorce*

Rene Douglas Covington [redacted] Atlanta, GA
name of spouse *date/place of birth*

Coconut Grove, FL
full address including Zip code *telephone number, including area code*

[redacted] Florence, Italy [redacted]
date/place of marriage *date/place of divorce*

7. List your children by name and furnish date and place of birth for each:
(If you do not have custody of any minor children, indicate whether you pay child support.)

A. Glenn Braswell, Jr. [redacted] Santa Monica, CA
name of child *date/place of birth*

name of child *date/place of birth*

name of child *date/place of birth*

8. List the complete address of all schools you have attended since your conviction, beginning with the most recent and working backward. Indicate the type of degree/diploma received and give the name of an instructor, counselor, or other school official who knew you well. (An optional continuation page is provided if necessary.)

School Not Applicable	*From (month/year)*	*To (month/year)*
Number and Street	*Degree*	*Month/year awarded*
City	*State*	*Zip Code*
Name of school official	*Telephone number of school official*	

Residences

9. List every place you have lived since the conviction, beginning with the present and working back. *(All periods must be accounted for below.)* List the physical location of your residence; do not use a post office box as an address. If you lived in an apartment complex, list your apartment number. (An optional continuation page is provided if necessary.)

Date you moved to present address (month/year):	*Number and Street* [redacted]			*Apartment Number*
	City Miami Beach	*State* FL	*Zip Code* [redacted]	

From (month/year):	*Number and Street* [redacted]			*Apartment Number*
To (month/year):	*City* Las Vegas	*State* Nevada	*Zip Code*	

From (month/year): 1997	*Number and Street* [redacted]			*Apartment Number*
To (month/year):	*City* Coconut Grove	*State* FL	*Zip Code* [redacted]	

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Employment History

10. List all periods of employment and unemployment since the conviction, beginning with the present and working backward. List all full and part-time work, self-employment, and periods of unemployment. For each period of unemployment, indicate your means of support. (An optional continuation page is provided.)

Present Employer: G.E. Data Systems, Inc.; Gero Vital Int'l, Inc.			Telephone (include area code): [redacted]
Date you began this employment (month/year): 1990	Number and Street: [redacted]		
	City: Marina Del Rey	State: CA	Zip Code: [redacted]
Type of business: Nutritional Products	Position	Supervisor: Not Applicable	Supervisor's telephone number

Employer: Self-employed/worked out of home			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

(a) Since the conviction, have you been fired or left a job following allegations of misconduct or unsatisfactory job performance? ☐ yes ☒ no

(b) Have you failed to list the conviction, or any other arrest or conviction, on any employment or other application where requested to list such information? ☐ yes ☒ no

If you answered yes to either of the above questions, explain fully below. An optional continuation page is provided.

Substance Abuse and Mental Health Information

11. (a) Have you ever used any illegal drug or abused prescription drugs or alcohol? ☒ yes ☐ no

If you answered yes, on a separate sheet identify the drugs used, the dates of use, and the frequency of use.

(b) Have you ever been involved in the illegal sale or distribution of drugs? ☐ yes ☒ no

If you answered yes, on a separate sheet provide complete details and dates of your involvement.

(c) Have you ever sought or participated in counseling, treatment, or a rehabilitation program for drug use or alcohol abuse? ☒ yes ☐ no

If you answered yes, on a separate sheet specify the dates of treatment or counseling, and provide the name, full address, and telephone number of the treatment facility and of the doctor, counselor or other treatment provider. See Attachment #11

(d) Have you ever consulted with a mental health professional (psychiatrist, psychologist, or counselor) or with another health care provider concerning a mental health-related condition? ☒ yes ☐ no

If you answered yes, on a separate sheet specify the dates of treatment and the name, full address, and telephone number of the counselor/treatment provider. See Attachment #11

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Attachment to No. 11

Mr. Braswell successfully participated in and completed numerous institutional programs and courses including, but not limited to, the following, which are directly related to the reasons the Court sent Mr. Braswell to F.C.I. Lexington:

Alcoholics Anonymous
Narcotics Anonymous
Multi-Modal Treatment
Introduction to Alcohol
First Three Steps
Alcohol Overview
Alcohol & The Family
Positive Mental Attitude I
Basic Self Image
Advanced Self Image
Transactional Analysis

Following his release from prison, Mr. Braswell returned to Florida where, under the supervision of the probation office, he both successfully participated in drug urinalysis and stress treatment programs.

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Civil and Financial Information

12. (a) Are you in default or delinquent in any way in the performance or discharge of any debt or obligation imposed upon you? ☐ yes ☒ no

(b) Since the conviction, have any liens (including federal or state tax liens) or any lawsuits been filed against you, or have you filed for discharge of your debts in bankruptcy? ☐ yes ☒ no

(c) Do you have pending any judicial or administrative proceedings with the federal, state, or local governments? ☒ yes ☐ no

If you answered yes to any question, explain fully on the optional continuation page.

Mr. Braswell, along with two companies, has brought a petition under seal concerning matters pending in the U.S. District Court for the Central District of California.

Military Record

13. (a) Have you ever served in the armed forces of the United States? ☐ yes ☒ no

Dates of service:_____ Branch(es):_____

Serial numbers:_____ Type of discharge:_____

Decorations (if any):_____

If other than honorably discharged, specify type and circumstances surrounding your release(s) (use optional continuation page) and attach copy of your separation papers (Form DD-214.

(b) While serving in the armed forces, were you the recipient of non-judicial punishment or the defendant in any court-martial? ☐ yes ☐ no

If yes, state fully the nature of the charge, relevant facts, disposition of the proceedings, the date thereof, and the name and address of the authority in possession of the records thereof. If you were convicted of an offense by court-martial, provide a copy of the court-martial promulgating order and on a separate sheet provide the same information with respect to each conviction that is required in questions 2 through 4 of this application.

Civil Rights and Occupational Licensing

14. Have you ever been granted or denied restoration of your civil rights (for example, a state pardon, a certification of restoration of civil rights, or a certificate of discharge)? ☐ yes ☒ no
Attach a copy of the document(s) evidencing the state's action.

15. Have you ever been granted or denied removal of your federal or state firearms disabilities?
Attach a copy of the document(s) evidencing the federal or state action. ☐ yes ☒ no

16. Since the conviction, have you been granted or denied any type of business or professional license, including the reinstatement of any licenses that were revoked or denied, in which your conviction was a consideration? ☐ yes ☒ no

If yes, attach a copy of the document(s) evidencing the action, including any explanation of the reasons for such action. If not available, provide the name, full address, and telephone number of the relevant authority taking the action, the nature of the license, the disposition of your request, and the date of the disposition. Use optional continuation page if necessary.

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Reasons for Seeking Pardon

17. State your reasons for seeking a pardon. Please refer to paragraphs 4 and 11 in the attached Information and Instructions on Pardons. (As pointed out in paragraph 10 of the attached instructions, a pardon is a sign of forgiveness. Accordingly, in the usual request for pardon you should not reargue your case, assert innocence, or otherwise attack the validity of your conviction.)

During the past 15 years, Glenn Braswell has enjoyed an exemplary record of business accomplishments enhanced by significant civic contributions. He is currently the Chairman of the Board of G.B. Data System, Inc. and Gero Vita International, Inc. In the early 1980's, however, as a pioneer in the field of nutritional supplements, he was denigrated as a "snake oil" salesman for marking products that are, ironically,, widely accepted today. A visionary who challenged conventional medical doctrines, he was years ahead of mainstream thinking in the health care field, a mainstream that now enthusiastically embraces the use of vitamin and dietary supplements. See Exhibit 17-A.

His early successes and high-profile controversies included an alleged "expose" by shows like "Sixty Minutes" followed by three 1983 federal indictments in Atlanta. In the 1983 trial for perjury, Case NO 83-CR-127, the prosecutor's case rested predominantly on Salvatore Borriello, an unacceptably tarnished predicate for a white-collar case by current standards. For example, at the time of the trial, Borriello's criminal history included recent convictions for mail fraud and tax evasion, as well as an extensive succession of 14 other felony arrests for crimes ranging from possession of counterfeit equipment to grand larceny and fraudulent checks. Some of these charges resulted in substantial prison sentences. Adding mental impairment to criminal culpability, in 1982, Borriello was admitted to a hospital reporting that he had suffered self-proclaimed loss of memory, as well as episodes of disorientation due to syphilis. An excerpt of the medical report is attached as 17-B while copies of a report on Borriello's criminal history are attached as Exhibits 17-C. Subsequent to his loss of memory he testified against Mr. Braswell.

Following conviction on one of the two perjury counts, Braswell pled to the remaining indictments, including mail fraud and tax evasion. Case Nos. 83-CR-126, 83 CR-267A1. No jail time was added by virtue of these convictions and, in light of his inability to fund any further defense as well as the threats of more prison and more charges, he made an *Alford* plea. An *Alford* plea, unlike the vast majority of federal criminal pleas, is essentially an acquiescence to a conviction without the specific admissions of actual guilt that are ordinarily required in plea colloquies. The District Judge, seemingly troubled by the weakness of the government's case, imposed the three-year sentence requested by Braswell's attorney over the government's objections. Thereafter, when Braswell filed a motion to reduce sentence, the District Judge granted the motion, reducing it to time served, a total of seven months.

Apart from the deeply troubling circumstances of reliance on a witness such as Borriello are subsequent legal developments that further would undermine the validity of the conviction under today's standards. These include the fact that a 1995 Supreme Court case revised the legal methodology for materiality in perjury cases in *United States v. Gaudin*, 515 U.S. 506 (1993). Glenn's conviction, if appealed today, would undoubtedly be erased. Despite the changes in the law, a federal appeals court ruled a year ago that, for procedural reasons, Glenn's convictions in the mid-1980's could not be remedied at this late date through *coram nobis*.

Certification and Personal Oath

I hereby certify that all answers to the above questions and all statements contained herein are true, and I understand that any misstatements of material facts contained in this petition may cause adverse action on my petition for pardon, in addition to subjecting me to any other penalties provided by law.

In petitioning the President of the United States for pardon, I do solemnly swear that I will be law-abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

Respectfully submitted this _____ day of _____, 19_____.

_____
(signature of petitioner)

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public

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RESIDENCES

1979 [redacted]
Atlanta, GA

1980-81 [redacted]
Fort Lauderdale, FL[redacted]

1985 Lexington Federal Correctional Institution
Lexington, VA

1987-88 [redacted]
Marina Del Rey, CA

1991 [redacted]
Reno, NV

1992-96 [redacted]
Las Vegas, NV

1997 [redacted]
Coconut Grove, FL

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United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

CHARACTER AFFIDAVIT

on behalf of

A. Glenn Braswell
(print or type name of petitioner)

In support of the application of the above named petitioner to the President of the United States for pardon, I, Richardson R. Lynn
(print or type name of affiant)

residing at [redacted] Malibu, CA [redacted]
(number) (city) (state) (zip code)

[redacted] where occupation is Dean, Pepperdine University School of Law
(petitioner's business name and address)

certify that I have personally known the petitioner for 3 years. Except as otherwise indicated below, petitioner has behaved since the conviction in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether the petitioner has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows:

While I am aware of Mr. Braswell's prior conviction, my dealings with him have dealt with his strong charitable instincts, as he established an endowed scholarship fund at the law school that also offers summer employment to the recipient. As a member of the Board of Directors of one of his companies, I have observed him to have the highest standards of business ethics and concern for his employees. His prior experience where he crossed the line and paid the price has clearly resulted in a great citizen who is making a significant contribution to American society.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

(signature of affiant)

Subscribed and sworn to before me this 12 day of January A.D. 2001

Notary Public

PATRICIA A. HAYES
Commission #1263813
Notary Public - California
Los Angeles County
My Comm. Expires May 14, 2004

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PHOTOCOPY

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

CHARACTER AFFIDAVIT

on behalf of

A. Glenn Braswell
(print or type name of petitioner)

In support of the application of the above named petitioner to the President of the United States for pardon, I, Dr. John J. Andrews
(print or type name of affiant)

residing at [redacted] Atlanta, GA [redacted]
(Street) (City) (State) (Zip Code)

[redacted] whose occupation is Professor Emeritus - Emory University
(Telephone number area code)

certify that I have personally known the petitioner for 25 years. Except as otherwise indicated below, petitioner has behaved since the conviction in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether the petitioner has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows:

1)I have been in continuous contact with Mr. Braswell for the past 15 years

2) Iknow of nothing of a derogatory nature regarding his business, professional or personal life during this period of time.

3) He has (and is) a very successful business man and a good employer - both fair and generous to his employees

4) He is of high moral character, a generous supporter of numerous charities and to my knowlwdge - law abiding.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

[Signature of affiant]

Subscribed and sworn to before me this 12 day of Jan. 19 01

Susan Pass
Notary Public

Notary Public, Henry County, Georgia
My Commission Expires May 20, 2002

NOTARY PUBLIC GEORGIA HENRY COUNTY

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AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I authorize any investigator, special agent, or other duly accredited representative of the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I understand that, for financial or lending institutions, medical institutions, hospitals, health care professionals, and other sources of information, a separate specific release will or may be needed, and I may be contacted for such a release at a later date.

I further authorize the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my suitability for a government benefit.

I authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this form, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for three (3) years from the date signed.

Signature (sign in ink)		
Full Name (type or print legibly) ALMON GLENN BRASWELL		*Date Signed*
Other Names Used		
Street Address [redacted]		
City Miami Beach	*State* FL	*ZIP Code* [redacted]
Home Telephone Number (include area code) [redacted]	*Social Security Number* [redacted]	

November 1995

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Profile: A. Glenn Braswell

A. Glenn Braswell is Chairman and Chief Executive officer of Gero Vita International, Inc., and publisher of the *Journal of Longevity*, the nation's most widely read publication on longevity and nutrition. By its 10th anniversary in 1999, the Journal's circulation had grown to two million readers.

Mr. Braswell founded Gero Vita International in 1990 to promote and market an array of nutritional products and publications intended to enhance health and extend life. Later that year, he established the *Journal* to review research in preventive medicine for the layperson and promote health, well-being and anti-aging.

Within a few years, Mr. Braswell transformed the company into an industry leader. In rapid succession, the research department turned out innovative anti-aging supplements, such as Prostata, a combination of Pygeum africanum and Serenoa repens to aid prostate health, and Gero Vita G.H.3., a nutritional version of Gerovital, the popular European anti-aging formulation developed by Dr. Ana Aslan. Each formula proved to be a merchandising bonanza, and the health benefits of their ingredients are well supported in scientific studies.

At the same time, Mr. Braswell diversified, creating new products several times a year and launching Health Quest, Inc., which publishes books by noted specialists in all facets of nutritional health. In the past decade, Gero Vita International Inc., has formulated dozens of unique and popular nutritional supplements tailored for use by healthy and vibrant seniors and designed to help them make the most of their golden years. Gero Vita International, Inc., has grown into an international enterprise noted

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EXHIBIT A

for its high-quality products and breakthrough scientific research. By 1993, Mr. Braswell's company was one of the largest mail-order nutritional companies in America. For 1999, its sales approached $250 million.

Mr. Braswell's views are featured in each issue of the *Journal of Longevity* under the heading of "Letter from the Publisher." The *Journal* has become a widely respected publication within the integrative medicine and nutritional health field; others - even competitors - frequently quote the *Journal*. On its board of advisors are more than 80 professionals from virtually every area of the medical field.

In recognition of his efforts, Mr. Braswell received the American Academy of Anti-Aging Annual Award (1994 and 1995) for his support and advocacy of issues covered by this national organization. In 1998, he was named " Humanitarian of the Year" by the prestigious 1,500-member physician group, which consists of the leading anti-aging medical professionals in the country. Mr. Braswell also received the Health Freedom Activist Award in 1993 and 1994 for the impetus he provided in educating the public on health, nutrition and anti-aging issues. He was recognized by the National Health Federation, a 30-year-old, 30,000-member organization, and by the American Oceans Campaign, Ted Danson's non-profit environmental organization, for his contributions as well as his editorial support.

In 1998, Mr. Braswell's commitment to educating people about integrative medicine prompted him to be the driving force behind the establishment of the Council on Natural Nutrition, a non-profit organization dedicated too educating consumers on supplements and health-related issues. The Council, which has been featured in the media, ranging from *Time* magazine to *Good Morning America*, has been invited to address Congress on two different occasions.

Mr. Braswell believes that the use of supplements, along with pioneering

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research, will unmask and eventually ameliorate the cellular basis for human aging, enable Americans to live into their 90s and beyond, and dramatically improve their health and the quality of their lives.

"Health care is a monumental challenge for our country," he says, "and to meet that demand, we have gathered a high-powered staff of biochemists, physicians and researchers who are constantly searching for longevity and health breakthroughs. Our goal is to formulate state-of-the-art products that will go a long way toward building and maintaining a healthy, high-quality, long life for all people. That's our hope and our goal at Gero Vita International."

To further these goals, Mr. Braswell expanded his philanthropic activities early in the new millenium with the establishment of the A. Glenn Braswell Foundation. The non-profit organization, which is dedicated to anti-aging and education, will present a series of Braswell Symposiums, the first of which will be held in San Francisco next March. Four Nobel Prize winners will headline the special "longevity-themed' conference. Medical professionals from throughout the country will be on hand for the event, which is being chaired by Dr. Walter Bortz of Stanford University and Dr. Ron Lawrence of UCLA.

Mr. Braswell is actively involved in numerous other research, charitable and civic activities. In 1998, he sponsored a research project in Arizona to determine the impact of nutritional supplements on learning and attention deficit disorder (ADD). Results of the study indicate positive benefits of specific nutritional therapy. Mr. Braswell is also a prime supporter of Dr. Michael West's multi-year scientific research project at Stanford University, where biological mechanisms are being studied in order to increase longevity and reduce the probability of cancer.

In addition, Mr. Braswell has supported Citizens for Health, the national non-profit consumer organization that spearheaded efforts resulting in the watershed DSHEA

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legislation, the federal law permitting supplement manufacturers to inform their customers about the effects of supplements on human structure and function.

Beyond science, Mr. Braswell has become noted as an advocate of education and the impact it can have on social issues as well as longevity and science. He established a special scholarship program for his employees, and thanks to the fund, four current employees are pursuing advanced degrees in science, management, marketing and information technology. Mr. Braswell also has established an endowed scholarship fund at the Pepperdine University School of Law for "exceptional students who exemplify the highest standards of achievement."

His interest in the community and the people lead Mr. Braswell to contribute $200,000 to support the widows and orphans of police officers in Los Angeles and Miami. For his long-time support and community involvement, Mr. Braswell received recognition from Los Angeles Police Chief Bernard Parks, the entire City Council of Los Angeles and Frank Boni of Miami-Dade's Police Officer's Assistance Trust.

A. Glenn Braswell was born in Albany, Georgia. Raised by his parents in rural Georgia, he received his degree from Alabama College in Birmingham. He then moved to Atlanta and entered the nutritional supplement field in its infancy during the 1970s, when most people were unconcerned even about cholesterol. Mr. Braswell now resides in Florida and has a two-year-old son, Glenn Jr. He is an avid physical fitness and sports enthusiast and enjoys ocean cruising, fishing and tennis.

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BISCAYNE MEDICAL CENTER, INC.
2601 N.E. 209TH STREET AT BISCAYNE BLVD.
MIAMI, FLORIDA 33160

03-07-41

DISCHARGE SUMMARY

BORRIELLO, SALVATORE

ADMISSION

F DISCHARGE

ING
LEN, M.D.

DISCHARGE DIAGNOSIS

philis.
sential tremor.
xiety, stress reaction.

REASON FOR ADMISSION

patient is a 45 year old white male admitted for evaluation positive VDRL, loss of memory, episodes of disorientation, severe weakness to the point of almost falling down. Patient ms he was essentially well until six months prior to admission he started complaining of severe dizzy episodes, memory loss, oted diffuse areas of maculopapular pruritic rashes throughout body. He came to my office.

PHYSICAL EXAMINATION

essentially normal, but he had a positive VDRL in 1:4 dilution.

ient called me the next day, was severely weak, difficulty stand-, and he was subsequently admitted to the hospital for treatment, luation and LP.

PAST MEDICAL HISTORY

d shrapnel in his left hand before.

CIAL HISTORY: Positive smoker and social drinker.

FAMILY HISTORY

o brothers alive and well. Father died of MI '64. Mother died of the breast in her 50s.

REVIEW OF SYSTEMS

ight hand shrapnel and dizzy.

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EXHIBIT B

JAN 07 1983
BEN H. CARTER Clerk
By Deputy Clerk

UNITED STATES DISTRICT COURT
CASE # 82-127A
75 Spring Street S.W.
Atlanta, Georgia. 30335

United States

V

Salvatore Borriello

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta
JAN 7 1983
BEN H. CARTER Clerk
By: [signature] Deputy Clerk

MOTION FOR EXCISION OF PRESENTENCE INVESTIGATION REPORT.

Comes now, Salvatore Borriello, and moves this Court to excise his Presentence Investigation Report, and alleges as follows:

1.) Salvatore Borriello was convicted on September 15,1982, of the charge of Mail Fraud and Income Tax Evasion.

2.) The Presentence Investigation Report contains convictions for the following offenses:

4/22/60
Supreme Court, Justice Culkin.....Fraudulent checks; quanity of tools. Probation; discharged on 4/7/64.

12/1/60
Restitution made.....dismissed. Fraudulent check; received tools valued at $436.86.

9/5/61
New York City Police Dept.
New York, New York. Petty larceny.

10/17/61
New York Police Dept.
New York, New York. attempted grand larceny.

5/19/64
New York City Fraudulent checks; misdemeanor.
Paid discharge, 5/19/64

10/17/64
New York City Police Dept.
New York, New York. Attempted grand larceny.
2nd degree
Probation.

9/24/65
New York City Police Dept.
New York, New York
Supreme Court, Kings County, New York.....dismissed. Grand larceny, Possession of burglar tools.

12/21/66
UNITED STATES DISTRICT COURT
Michigan Violation T 18, Sec. 2312, UNITED STATES CODE
Mail Fraud.....dismissed 7/28/71
Dyer Act.....dismissed 8/13/71

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EXHIBIT C

9/28/65
Operated motor vehicle without consent of owner.
.....dismissed.

5/6/69
Springfield, Ma. Police Dept. False instrument, 2 counts attempted larceny.
Hampden Superior Court.....2½ to 3 years; 2 counts concurrently.

1/25/68
Ft. Lauderdale, Florida Possession of counterfit equipment.
Nollo processed.....12/12/70

9/17/69 age 32
Nassau County Police Dept. Grand larceny, 1st degree, 3 counts
Long Island Details not available.
Nassau County Court... .....Sentence suspended.

9/24/60
New York City Police Dept. Illegal use of motor vehicle
New York, New York
Supreme Court, Kings County, New York..... Conditional discharge

10/11/69
Nassau County Police Dept. Grand larceny, 1st degree.
Monticello, New York.

12/17/69
New York City Criminal buying and receiving of stolen property; misdemeanor.
2 to 3 years in State prison, run consecutively with Mass. Sentence.

3.) The last conviction was on December 17, 1969, and was followed by a ten (10) year crime free period.

4.) Rules 606B of the Parole Commission, provide that no conviction more than ten (10) years old and followed by a ten (10) year crime free period shall be considered by the Parole Commission.

Respectfully Submitted,

Salvatore Borriello

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KENDALL COFFEY, P.A.
[redacted]
2600 SOUTH BAYSHORE DRIVE
MIAMI, FL 33133

KENDALL COFFEY [redacted]

January 17, 2001

The Honorable William Jefferson Clinton
President of the United States of America
The White House
Washington, D.C.

Re: Petition for Pardon, A. Glenn Braswell

Dear Mr. President:

I am writing on behalf of A. Glenn Braswell who I believe is truly deserving of the extraordinary measure of mercy embodied in a Presidential pardon. Relentlessly pursued by federal prosecutors in the late 1970's and early 1980's, they eventually found a memory-afflicted, career criminal to testify against Mr. Braswell in criminal proceedings that would never pass muster today. Even though the convictions would not meet modern standards of law and ethics and took place some 17 years ago, serious and harmful consequences continue. Because Mr. Braswell has suffered injustice that no other power can reach, we submit to you his entreaty for clemency.

During the past 15 years, Glenn Braswell has enjoyed an exemplary record of business accomplishments enhanced by significant civic contributions. He is currently the Chairman of the Board of G.B. Data Systems, Inc. and Gera Vita International, Inc. In the early 1980's, however, as a pioneer in the field of nutritional supplements, he was unfairly denigrated as a "snake oil" salesman for marketing products that are, ironically, widely accepted today. A visionary who challenged conventional medical doctrines, he was years ahead of mainstream thinking in the health care field, a mainstream that now enthusiastically embraces the use of vitamin and dietary supplements.

His early successes and high-profile achievements in the vitamin field led to attacks orchestrated by established pharmaceutical interests. Shows like "Sixty Minutes," followed with alleged "exposes" which, in turn, attracted intensive prosecution efforts that led to three 1983 federal indictments in Atlanta. In the 1983 trial for perjury, the prosecutor's case rested almost entirely on Salvatore Borriello, an embarrassing predicate on which to rest a case against a previously impeccable businessman. In fact, it was in the course of the prosecution's investigation of Borriello's alleged racketeering activities that Braswell, with a spotless record at the time, appeared as a grand jury witness. In a grim paradox that turned justice upside down, Braswell abruptly became the government's target based on accusations leveled by Borriello, the real criminal. Indeed, at the time of Braswell's trial, Borriello's criminal history included recent convictions for mail fraud

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PHOTOCOPY

and tax evasion, as well as an extensive succession of 14 other felony arrests for crimes ranging from possession of counterfeit equipment to grand larceny and fraudulent checks. Adding mental impairment to criminal culpability, in 1982, Borriello was admitted to a hospital reporting that he had suffered self-proclaimed loss of memory, as well as episodes of disorientation due to syphilis.

Based essentially on Borriello's testimony, all induced in exchange for favorable consideration and treatment by the federal prosecutors, Braswell was convicted on one of the two perjury counts. In light of that conviction, Braswell pled to the remaining indictments, including mail fraud and tax evasion and later to a state court theft charge[1] because no jail time whatsoever was added by virtue of these other convictions and concurrent sentences. By then, unable to fund any further defense and facing threats of years in prison if he failed to plead, Braswell had no reason to fight the other charges. In fact, concerning the federal charges, he entered *Alford* pleas. An *Alford* plea, unlike the vast majority of federal criminal pleas, is essentially an acquiescence to a conviction without the specific admissions of actual guilt that are ordinarily required in plea colloquies. Significantly, the District Judge, seemingly troubled by the weakness of the government's case, imposed no more than the three-year sentence requested by Braswell's attorney over the government's objections. Thereafter, when Braswell filed a motion to reduce sentence, the District Judge granted the motion, reducing it to time served, a total of seven months.

Apart from the deeply troubling circumstances of reliance on a witness such as Borriello are subsequent legal developments that further would undermine the validity of the conviction under today's standards. These include the fact that a 1995 Supreme Court case revised the legal methodology for materiality in perjury cases in *United States v. Gaudin*, 515 U.S. 506 (1993). Glenn's conviction, if appealed today, would undoubtedly be erased. Unfortunately, the courts have declined to apply *Gaudin* retroactively. A year ago, a federal appeals court ruled that for procedural reasons, Glenn's convictions in the mid-1980's could not be remedied at this late date through *coram nobis*.

Although long ago for judicial purposes, the effects of the convictions in 1983 nonetheless continue to haunt Glenn Braswell. For instance, in his recent divorce, his ex-wife's attorney repeatedly exploited the fact of the convictions throughout the court proceedings, proceedings that included significant custody issues concerning his three-year-old son. Because the stigma of perjury can be especially unfair, the 1983 conviction leaves a stain that even 17 years of good work and good deeds have not erased.

For these reasons, I believe this petition deserves clemency. Your Presidency has brought our nation the greatest eight years it has enjoyed during my lifetime. It has created a legacy not only

[1]Illustrating the weakness of such charges, Braswell pled *nolo* amidst a 1983 landlord-tenant dispute in which Braswell, as landlord, went upon premises he actually owned upon advice of his civil lawyer.

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of great leadership but of wisdom and compassion. Granting a pardon to bring justice and healing to a man's life would further the extraordinary legacies that have defined your Presidency.

Very truly yours,

Kendall Coffey

Kendall Coffey

KC:lba

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KENDALL COFFEY

[redacted]

January 12, 2001

Dear Hugh, Attached is the application we discussed. The executed copy along with additional affidavit support will arrive at my office later today. Numerous support letters are available and can be added immediately. For your review, I have tabbed the explanation of the basis for the pardon along with one of the supporting affidavits from a law school dean. The client proposes $20,000 for a best efforts submission and an $80,000 success payment. Both numbers are negotiable, especially the latter. The initial payment can be wired Tuesday a.m. if the representation is accepted. Please let me know your thoughts, and please call for lunch later this month. Best Regards, Kendall

00 03 00

EXHIBIT 48

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	4046
CONNECTION TEL	[redacted]
SUBADDRESS	
CONNECTION ID	
ST. TIME	01/17 11:51
USAGE T	02'11
PGS.	4
RESULT	OK

200 GRAND BAY PLAZA
2665 SOUTH BAYSHORE DRIVE
MIAMI, FLORIDA 33133
305•285•0800 — PHONE
305•285•0257 — FAX

KENDALL COFFEY, P.A.

Facsimile-PERSONAL AND CONFIDENTIAL

DATE:	JANUARY 17, 2001
TO:	MR. HUGH RODHAM, C/O THE WHITE HOUSE
FAX:	[redacted]
FROM:	KENDALL COFFEY, ESQ.
RE:	
CLIENT/MATTER:	
TOTAL NUMBER OF PAGES INCLUDING COVER PAGE:	
COMMENTS:	

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INFORMATION PROTECTED BY ATTORNEY-CLIENT AND/OR
PRODUCT PRIVILEGE. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE AND THE PRIVILEGES ARE N
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OR ANY THIRD PARTY RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT, ANY

EXHIBIT
49

00 04

KENDALL COFFEY, P.A.
200 GRAND BAY PLAZA
2665 SOUTH BAYSHORE DRIVE
MIAMI, FL 33133

[redacted] [redacted]

January 17, 2001

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President of the United States of America
The White House
Washington, D.C.

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of great leadership but of wisdom and compassion. Granting a pardon to bring justice and healing to a man's life would further the extraordinary legacies that have defined your Presidency.

Very truly yours,

Kendall Coffey

Kendall Coffey

KC:lba

KENDALL COFFEY, P.A.
[redacted]
MIAMI, FL 33133

[redacted] [redacted]

February 4, 2001

A. Glenn Braswell
G.B. Data Systems, Inc.
[redacted]
Marina del Rey, C[redacted]

PERSONAL AND CONFIDENTIAL

Attn: Ron Teppen

Re: **A. Glenn Braswell Clemency Application**

STATEMENT		
FOR PROFESSIONAL SERVICES RENDERED:		
Date	Description	Hours
01/05/01	Update on status with Glenn; misc. follow-through.	.3
01/08/01	Initial inquiries on engaging consultant re past convictions.	1.2
01/09/01	Follow-up inquiries, etc., concerning pardon.	.8
01/10/01	Further follow-up on pardon issues.	2.3
01/10/01	Review and analysis of status; update with Glenn;	.4
01/11/01	Extensive review and research of files; initial conferences including with Glenn; initial drafting of application on pardon.	9.6
01/12/01	Dozen phone conferences; extensive review of materials; revisions, etc., preparation of application	7.5

EXHIBIT
50

Date	Description	Hours
01/15/01	Update on status of various pending issues with Glenn, misc. follow-up.	.6
01/16/01	Review and revision of application; discussion with possible consultant; follow-up adding Broward conviction to application; multiple discussions, follow-ups, etc.	6.2
01/17/01	Drafting, finalizing letter on pardon; various follow-up discussions and inquiries	3.1
TOTAL	32 hours at $350 per hour	$11,200.00

PLEASE REMIT TO:

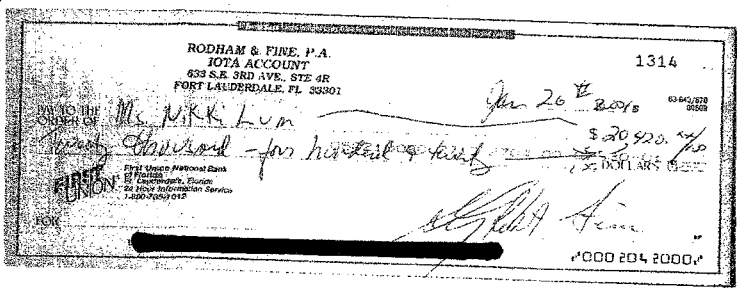
KENDALL COFFEY, P.A.

[redacted]

Miami, FL 33133

00 12

:F42033:20010802004598:1092 scanned on SCANER02 by Operator JAXMCR on Aug 03, 2001 at 03:15:24 PM - Page 126 of 158. : Best Copy



RODHAM & FINE, P.A.
IOTA ACCOUNT
633 S.E. 3RD AVE., STE 4R
FORT LAUDERDALE, FL 33301

1314

Jan 26th 2001

PAY TO THE ORDER OF Ms. Nikki Lum

$20,420.00

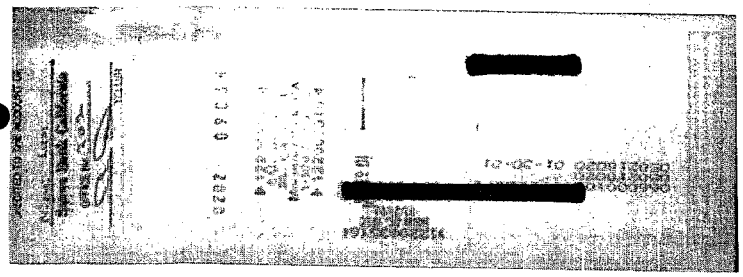
Twenty thousand - four hundred & twenty DOLLARS

FIRST UNION First Union National Bank of Florida
Ft. Lauderdale, Florida
24 Hour Information Service
1-800-705-1012

FOR [redacted]

⑈000 204 2000⑈

[redacted]



[redacted]

REQUEST [redacted] 20420.00
ROLL 4140 [redacted]
JOB 00345 P ACCT [redacted]
REQUESTOR DEBRA TAYLOR
. SUBPOENA FILE# 06080121-1

SUBPOENAS AND SUMMONS
PA4292
PHILADELPHIA, PA 99 99 9-999

EXHIBIT
51

HAND DELIVER

Caplin & Drysdale
ATTORNEYS
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Old Executive Office Building
Room 128
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January 18, 2001

BY HAND

Meredith Cabe, Esq.
Office of White House Counsel
to the President
Old Executive Office Building
Room 128
Washington, D.C. 20502

Dear Ms. Cabe:

We have been requested to forward the enclosed materials relating to Gene K. H. Lum and Nora T. Lum.

Sincerely yours,

Scott D. Michel

Enclosures

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
vs.	)	PRESENTENCE INVESTIGATION REPORT
	)	
Gene K.H. Lum	)	Criminal No. 97–0207–02

Prepared for: The Honorable Ricardo M. Urbina
U.S. District Judge

Prepared by: Mark McCroson
U.S. Probation Officer
(202) 565–1353

Assistant U.S. Attorney
Raymond H. Hulser
Jonathan Biran
Public Integrity Section
U.S. Department of Justice
P.O. Box 27518, McPherson Station
Washington, D.C. 20038
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Defense Counsel
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Cono R. Namorato (Retained)
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One Thomas Circle, N.W.
Washington, D.C. 20005–5802
(202) 862–5030 or 862–5090

Sentencing Date: September 9, 1997, at 9:30 a.m.

Offense: *Count One:* Conspiracy, 18 U.S.C. § 371—5 years/$250,000 fine

Release Status: The defendant was released on personal recognizance following his plea on June 5, 1997, in which status he remains.

Detainer: None

Codefendant: Nora T. Lum, Criminal No. 97–0207–01

Related Case: Trisha C. Lum, Criminal No. 97–0208–01

Date Report Prepared: July 16, 1997
Date Report Revised: August 4, 1997

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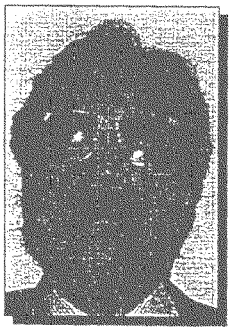
Identifying Data:

Date of Birth:	[redacted]
Age:	58
Race:	Asian
Sex:	Male
SSN:	[redacted]
FBI No.:	None assigned
U.S. Marshal No.:	[redacted]
Other ID No.:	None
Education:	Law Degree
Dependants:	None
Citizenship:	United States
Place of Birth:	Honolulu, Hawaii
Legal Address:	[redacted] Long Beach, California 90802 [redacted]
Full Name:	Gene Kung Ho Lum



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PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. On May 21, 1997, a one-count Criminal Information was filed in the U.S. District Court for the District of Columbia charging Nora T. and Gene K.H. Lum with Conspiracy, 18 U.S.C. § 371.

2. On June 5, 1997, in accordance with a written plea agreement, each defendant entered a guilty plea to the Information. In addition to pleading guilty, the defendants agreed, among other terms, to cooperate with the Public Integrity Section of the U.S. Department of Justice. In return, the Government agreed to forego prosecuting the defendants for conduct now known to the Public Integrity Section or to law enforcement agencies working with the Public Integrity Section, or for offenses relating to campaign financing laws committed before May 16, 1997. As contained in paragraph 10 of the plea agreement, the parties agreed that, with some exceptions, the Lums may still be prosecuted for tax-related violations.

Related Case

3. In Criminal No. 97-0208, Trisha C. Lum pled guilty to a one-count Information charging her with Contribution in the Name of Another, in violation of 2 U.S.C. § 441f and Penalty for the Violation of the Federal Election Campaign Act, 2 U.S.C. § 437g(d)(1)(A), a Class A misdemeanor punishable by a term of imprisonment of not more than 1 year and a fine of not more than $25,000 or 300% of the contribution involved in the offense. Sentencing is scheduled for August 27, 1997.

The Offense Conduct

History of the Investigation

4. The Government's investigation into the Lums' conduit campaign contributions of approximately $50,000 to the Kennedy for Senate, Kennedy for Senate 2000, and Stuart Price for Congress campaigns in 1994 and 1995 began after the Office of the Independent Counsel closed its investigation of former Secretary of Commerce, Ron Brown, following his death in Croatia. Parts of the Independent Counsel's investigation of Ron Brown's son, Michael Brown, were turned over to the Public Integrity Section of the U.S. Department of Justice. During the Government's investigation into a $150,000 distribution paid to Michael Brown by Dynamic Energy, it became apparent to them that conduit campaign contributions were being made by the company and the Lums. At this time, the Government has not filed charges against any other party as a result of this investigation.[1]

[1] Another distribution was made to Brown on March 31, 1995, by check no. 2420, for $37,822.

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Factual Basis For Plea (filed with the Court on May 21, 1997)

5. At all times relevant to the Information and the Factual Basis for Plea, defendants *Nora T. Lum and Gene K.H. Lum* were aware that the following actions were prohibited:

(a) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's primary election;

(b) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's general election;

(c) for any person to make a contribution in the name of another person to the campaign of a candidate for federal office; and

(d) for any corporation to make a contribution to the campaign of a candidate for federal office.

6. At all times relevant to the Information and Factual Basis for Plea, defendants *Nora T. Lum and Gene K.H. Lum* were aware that the campaign of a candidate for federal office was required by federal law to provide information regarding contributors and contributions to the Federal Election Commission (FEC).

7. On May 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and caused those money orders to be submitted to the Kennedy for Senate Campaign as contributions in the names of two straw contributors on May 25, 1994 and June 20, 1994.

8. On May 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and contributed those money orders to the Kennedy for Senate Campaign as a contribution in the name of a straw contributor on June 20, 1994.

9. On May 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* provided $2,000 to a conduit contributor, and caused the conduit and another person to use those funds to make contributions to the Kennedy for Senate Campaign in their own names in the total amount of $2,000 on May 25, 1994.

10. On or about September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy Resources, Inc. ("Dynamic Energy") check number 1783 in the amount of $2,000 to be issued to an employee of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign.

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Defendants caused the employee to make a $2,000 contribution to the Kennedy for Senate Campaign using those funds on September 23, 1994.

11. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1781 in the amount of $3,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign. Defendants caused the employee to contribute $3,000 to the Kennedy for Senate Campaign in his own name and the name of his spouse on September 23, 1994.

12. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1787 in the amount of $2,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbusement for contributions to the Kennedy for Senate Campaign. Defendants caused the daughter of the shareholder/director to make a $2,000 contribution to the Kennedy for Senate Campaign in her own name on September 23, 1994.

13. On or about September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1786 in the amount of $5,000 to be issued to a shareholder, director, and officer of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign. On September 23, 1994, defendants and the shareholder, director, and officers of Dynamic Energy caused $5,000 in contributions to be made to the Kennedy for Senate Campaign in his own name and the names of three other conduit contributors.

14. In or about September 1994, defendants *Nora T. Lum and Gene K.H. Lum* asked an employee of Dynamic Energy to make a $1,000 contribution to the Kennedy for Senate Campaign. The employee submitted receipts to Dynamic Energy which reflected that the employee had incurred expenditures on behalf of Dynamic Energy. On September 19, 1994, defendants caused Dynamic Energy to issue Dynamic Energy check number 1788 to the employee in the amount of $1,009.26, with the notation "reimbursement." With defendants' knowledge, the employee made a $1,000 contribution to the Kennedy for Senate Campaign in her own name on September 23, 1994.

15. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1782 to be issued to defendant *Nora T. Lum* in the amount of $3,000, with the notation "reimbursement." Defendant *Nora T. Lum* deposited those funds into her personal checking account at State Bank & Trust in Tulsa, Oklahoma.

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16. On September 19, 1994, defendants used funds from defendant *Nora T. Lum's* personal checking account at State Bank & Trust to purchase two money orders in the amount of $1,000 each, and used those money orders to make contributions to the Kennedy for Senate Campaign in the names of two straw contributors on September 23, 1994. Between September 17, 1994, and September 23, 1994, defendants provided $1,000 to a consultant for Dynamic Energy, in the form of a check drawn on defendant *Nora T. Lum's* personal checking account at State Bank & Trust, and caused t onsultant to use those funds to make a $1,000 contribution to the Kennedy for Senate Committee in his own name.

17. On March 31, 1995, defendants *Nora T. Lum and Gene K.H. Lum* used $10,000 from a bank account in the name of *Nora T. Lum* to purchase ten American Express money orders in the amount of $1,000 each.

18. On April 4, 1995, defendants *Nora T. Lum and Gene K.H. Lum* caused the ten $1,000 money orders described in the preceding paragraph to be submitted to the Kennedy for Senate and Kennedy for Senate 2000 Campaigns as contributions in the names of straw contributors.

19. On February 2, 1995, defendants *Nora T. Lum and Gene K.H. Lum* purchased a $1,000 cashier's check and submitted the cashier's check to the Kennedy for Senate 2000 campaign as a contribution in the name of a straw contributor.

20. On April 2, 1995, defendants *Nora T. Lum and Gene K.H. Lum* provided a conduit contributor with $2,000 and caused the conduit to make $2,000 in contributions to the Kennedy for Senate Committee that were recorded in the conduit's own name and in the name of the conduit's spouse. Defendants provided the conduit with the funds in the form of two checks: the first check was a check on *Nora T. Lum's* personal account in the amount of $750, and the second was Dynamic Energy check number 2444 in the amount of $1,250.

21. Shortly before July 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* became aware that a shareholder, director, and officer of Dynamic Energy had been asked to raise $10,000 in contributions for the Stuart Price for Congress Campaign. On July 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1587 to be issued to this shareholder, director and officer of Dynamic Energy in the amount of $10,000. Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Stuart Price for Congress Campaign. On July 25, 1994, defendants and the shareholder, director, and officer caused $8,000 in contributions to be made to the Stuart Price for Congress Campaign in his own name and the names of three other conduit contributors.

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22. In or about July 1994, defendant *Nora T. Lum* asked two conduit contributors to make contributions to the Stuart Price for Congress Campaign. On or about July 19, 1994, defendants caused these two conduit contributors to submit $3,000 in contributions to the Stuart Price for Congress Campaign. Defendants caused another person to reimburse these conduit contributors with $3,000 in cash.

23. Defendants *Nora T. Lum and Gene K.H. Lum* caused the Kennedy for Senate and Kennedy for Senate 2000, and Stuart Price for Congress to file reports with the FEC which falsely reported the names of the conduit and/or actual straw contributors described above, and concealed the actual source of the contributions. *[end of proffer]*

24. The contributions listed in the proffer total $49,000.

Additional Background Information on Conduct
(Information contained in this section elaborates on the contributions and conduct described in the Factual Proffer in Support of Plea. Other then including $2,500 in contribution made by Siegel family members, which they claim were legitimately made, this section does *not* allege contributions in excess of the $49,000 set forth in the Factual Proffer)

25. In July 1994, Dynamic Energy issued to two consecutive checks, one to Michael Brown in the amount of $10,000, and one to Trisha Lum, Nora and Gene Lum's daughter, in the amount of $5,000. Brown and Trisha Lum used those funds to make conduit contributions to the Price campaign in the total amount of $13,000 using her own name, the name of her sister, Nickie Lum, and the name of her fiancé, Dimitri Seigel. She also gave to Commerce Department employees $3,000 in cash to reimburse them for their contributions to the Price campaign. Trisha Lum also took a leave of absence in the fall of 1994 to volunteer for the Kennedy campaign in Boston.

26. Among the Lums' three adult daughters, Trisha Lum was the most involved in the Lums' political activity. She graduated from the University of San Francisco in 1993 with a Bachelor of Science degree in Political Science. Before graduating, however, she took a leave of absence from school in 1992 to work with her parents on the Clinton presidential campaign. After the election, Trisha Lum obtained a position with the Department of Commerce, but she was not given any interest in Dynamic Energy because of her position with the Department of Commerce.

27. Paragraph deleted and incorporated with paragraph 25.

May and June 1994 Kennedy Contributions

28. Dynamic Energy, the company formed in 1993 and controlled by Nora Lum, named several of Lum family friends, associates and family members to the Board of Directors, and provided them with shares in the company. At the first meeting of the directors and

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shareholders of Dynamic Energy in January 1994, among other topics, Nora Lum discussed the political strategy for Dynamic Energy. According to at least one of the shareholders, Nora told them that she would occasionally ask them to contribute money to particular candidates.

29. In the spring of 1994, Dynamic Energy sold off a portion of a gas contract for a substantial profit. The Lums provided substantial distributions to themselves and the other shareholders in April 1994. Nora Lum received over $5 million, the Prices received approximately $2.4 million, and Michael Brown, a 5% shareholder, received $150,000. The family members and associates who held a one-half percent interest in Dynamic Energy each received a check for $10,000.

30. In May and June 1994, the Lums arranged several conduit contributions in connection with a fund-raising event at Kennedy's home in McLean, Virginia. The event was originally scheduled for May 20, 1994, but it was postponed to June following the death of Jacqueline Kennedy Onassis on May 19, 1994. Michael Brown was actively involved in organizing and raising funds for the event, and he introduced the Lums to the Kennedy campaign. Brown was one of three Co-Chairs of the event, and Nora and Gene were Vice-Chairs. The charge for admission to the event was $500 per person.

31. On May 1, 1994, Nora Lum made a $2,000 contribution to the Kennedy for Senate campaign, and she was thus "maxed out" for the 1994 Kennedy campaign. Her check contained the notation "1P/1G which indicated that $1,000 should be designated for the primary and $1,000 for the general election, suggesting that she was aware of the legal limits of the contributions.

32. There were several contributions that were funded directly by the Lums during this time frame. First, four $500 postal money orders were purchased in Washington, D.C., on May 18, 1994, and submitted to the Kennedy campaign in connection with the June fund raiser. The money orders were numbered sequentially, and were purchased at the same post office on the same day.

33. The first of the four money orders was in the name of Monica Aboud, a DNC employee at the time, who told the Government that she did not make the contribution. The money order was deposited by the campaign on May 25, 1994. The second $500 money order was submitted in the name of Dimitri Siegel, Trisha Lum's fiancé. This too was deposited by the Kennedy campaign on May 25, 1994.

34. The third money order was submitted to the Kennedy campaign in the name of Marcellas Sandoval. It was deposited by the Kennedy campaign on June 20, 1994. Sandoval told the Government that she did not purchase or submit the money order herself. The fourth

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money order was submitted to the campaign in the name of Jacqueline Sitterle, who is Dimitri Seigel's mother.[3]

35. In addition, on May 19, 1994, two postal money orders in the total amount of $1,000 were purchased at a post office in Washington, D.C., and they were submitted to the Kennedy campaign in the name of Gilbert Colon, who was Trisha Lum's supervisor at the Department of Commerce.

36. Next, Nora Lum provided Maxine Lum with a $2,000 check on May 19, 1994. Maxine deposited the check on May 20, 1994, and the same day wrote a $1,000 check to her fiancé, Roberto. On May 25, 1994, the same day as several other Lum-related contributions were submitted to the Kennedy campaign, Maxine Lum and Roberto each contributed $1,000.

September 1994 Kennedy Contributions

37. In September 1994, the Lums were involved in another fund raiser for Kennedy. The price for preferred seats was $2,000 each, and the lesser seats cost $1,000 each. Nora Lum told the Kennedy campaign that she would bring in a total of $40,000 for this event, and would fill two "preferred" tables at $20,000 each. Nora Lum had already "maxed out" to the campaign in May 1994, and Gene Lum had already given $1,000. Through conduit and other contributions, the Lums raised approximately $38,000 for this event, earning Nora Lum a seat at the table with President Clinton and Senator Kennedy.

38. As the event approached, the Lums issued a series of eight checks from Dynamic Energy on September 19, 1994, totaling $20,009.26. Those checks were followed by $20,000 in contributions to the Kennedy campaign on September 23, 1994. The checks and contributions are described in the following table:

Dynamic Check Number	Amount	Payable to	September 23, 1994 Kennedy Contributions
1781	$3,000	Larry Wong	$3,000 Larry and Betty Wong
1782	$3,000	Nora Lum	$3,000 arranged by Nora Lum
1783	$2,000	Eric Hubbard	$2,000 Kevin Gray

[3] The money orders in the name of Dimitri Siegel and his mother were not included in the Factual Basis for the Plea because Dimitri Siegel, through his attorney, indicated that he purchased and contributed these money orders himself.

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Dynamic Check Number	Amount	Payable to	September 23, 1994 Kennedy Contributions
1784	$1,000	Trisha Lum	$1,000 Trisha Lum
1785	$3,000	Gilbert Colon	$3,000 Gil and Cheryl Colon
1786	$5,000	Michael Brown	$5,000 arranged by Brown
1787	$2,000	Helen Yee	$2,000 daughter Melinda Yee
1788	$1,009.26	Kathy Nojima	$1,000 Kathy Nojima

39. All of these checks contained the notation "reimbursement." The specific amounts of the checks suggest the Lums were keeping close track of who had already contributed what amounts. For example, they had arranged $1,000 contributions by Larry Wong and Gil Colon earlier in 1994, and thus in September they were provided with the maximum $3,000 that they and their spouses could contribute. Likewise, Kathy Nojima, Nora Lum's sister, had already given $1,000, and so she was given only $1,000 to contribute in September. Eric Hubbard had not contributed earlier, and so he was given a full $2,000 to contribute.

40. Larry Wong was a director and shareholder of Dynamic Energy. According to the Government, the Lums acknowledged that they asked Wong to make $3,000 in contributions, and that they provided him with the funds to do so.

41. Nora Lum received a $3,000 "reimbursement" check on September 19, 1994. The financial records and other evidence indicate that Nora Lum deposited the check into her personal account and used $3,000 from that account to arrange $3,000 in contributions to Kennedy on September 23, 1994. Specifically, Lum gave $1,000 to Pat Owens, a Dynamic Energy consultant, who was working with the Lums in Tulsa, and directed him to make a $1,000 contribution to the Kennedy campaign. In addition, Nora Lum cashed a $2,000 personal check at State Bank on September 19, 1994, and used the funds to purchase two $1,000 money orders made payable to the Kennedy campaign, in the names of two family members.

42. Check number 1783 was written to Eric Hubbard, a friend and former co-worker of Michael Brown, who came to work in Dynamic Energy's Washington office in September 1994. Approximately a week before the September 19, 1994, checks were issued, Gene Lum told Hubbard, according to the Government, "I want me a Senator," and indicated that Hubbard could be helpful because Nora Lum was already maxed out

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to the Kennedy campaign. A few days later, Hubbard spoke to Nora Lum, and he agreed to act as a conduit. He received $2,000 from Dynamic Energy on September 19, 1994, and funneled the money through a friend, Kevin Gray, to make his $2,000 contribution to the Kennedy campaign.

43. According to the Dynamic Energy check register and the general ledger, Trisha Lum was the payee on Dynamic Energy check number 1784 in the amount of $1,000. She made a $1,000 contribution to the Kennedy campaign on September 23, 1994, along with all of the others. Dynamic Energy check 1784, however, never cleared the company account and was not included in the Factual Basis for Plea.

44. Gil Colon was in charge of Dynamic Energy's Washington office when he received a $3,000 check from Dynamic Energy on September 19, 1994. The Lums acknowledged to the Government that he was provided with these funds for the purpose of making $3,000 in contributions to the Kennedy campaign.

45. The next Dynamic Energy check on September 19, 1994, was a $5,000 check to Michael Brown, again with the notation "reimbursement." Brown used this money much as he did the money that he received from Dynamic Energy in July 1994. This time, he received $5,000 from Dynamic Energy, and he made exactly $5,000 in contributions, through himself and three other conduits, to the campaign.

46. The next September 19, 1994 "reimbursement" check was made payable to Helen Yee, a shareholder, in the amount of $2,000. The Lums arranged for this money to be passed to Yee's daughter, Melinda, and she made a $2,000 contribution to the Kennedy campaign. Melinda Yee was an employee at the Department of Commerce. According to Yee, Nora Lum told her that she would do for Melinda Yee what she did for her own daughters; that is, provide her with the funds to make a contribution.

47. The last Dynamic Energy check written on September 19, 1994, was payable to Kathy Nojima, Nora Lum's sister, in the amount of $1,009.26, with the notation "reimbursement." This check was coded in Dynamic Energy's books as a miscellaneous Tulsa expense reimbursement. Nojima contributed $1,000 to the Kennedy campaign on September 23, 1994, along with the other Lum-related contributions. Her check was dated September 15, 1994.

48. The check register was written largely by Kathy Nojima, including the series of entries on September 19, 1994, and she signed all of the reimbursement checks that day. Although none of the other September 19, 1994 "reimbursement" checks were supported by any documentation, the check for $1,009.26 check to Nojima was supported by miscellaneous receipts for long distance phone charges, a beauty salon, and restaurant

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receipts attached to a September 12, 1994, memo from Nojima supporting a reimbursement for the expenses.

April 1995 Kennedy Contributions

49. The Kennedy campaign incurred a $2 million debt during the 1994 election, and it began efforts to retire the debt immediately after the election. Nora Lum volunteered to help the campaign with that debt. The campaign had two separate committees and accounts set up at that point. First, individuals could contribute to the Retirement of Debt Fund, which would be a contribution to the Kennedy for Senate 1994 campaign. Second, the campaign began its campaign for re-election in 2000. On February 10, 1995, Nora Lum reached the maximum campaign contribution limit by giving $2,000 to the Kennedy for Senate 2000 Committee. In addition, she bought a $2,000 cashier's check in Gene Lum's name and contributed it to the Kennedy campaign on the same date as her own contribution.

50. During early 1995, the campaign began to work on a substantial fund-raising event that took place on April 4, 1995. There were fewer than 30 fund raisers present, and the Lums were the biggest fund raisers for this event. Nora Lum was seated at a table of seven with the President of the United States and Senator Kennedy.

51. A few days before the event, on March 31, 1995, the Lums purchased $10,000 in money orders at State Bank and Trust in Tulsa. The money orders were filled out with the names of various straw contributors and given to the Kennedy campaign. The contributions were divided between Kennedy's 1994 and 2000 campaigns, depending on which conduit was used. The money order contributions are set forth in the following table:

Name of Purported Contributor	Money Order Number	Amount	Campaign
Yon Lee	9669	$1,000	Kennedy for Senate
Yon Lee	9670	$1,000	Kennedy for Senate 2000
Helen Yee	9671	$1,000	Kennedy for Senate
Helen Yee	9672	$1,000	Kennedy for Senate 2000
Ronald Higa	9673	$1,000	Kennedy for Senate
Ronald Higa	9674	$1,000	Kennedy for Senate 2000
Larry Wong	9675	$1,000	Kennedy for Senate
Larry Wong	9676	$1,000	Kennedy for Senate 2000
Ted Kimura	9677	$1,000	Kennedy for Senate

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Name of Purported Contributor	Money Order Number	Amount	Campaign
Ted Kimura	9678	$1,000	Kennedy for Senate 2000

52. When the campaign received the money orders, they sent out their standard forms to the purported contributors asking them to certify that their money order contributions came from funds in their personal account. The Government's evidence indicates that the Lums and their straw contributors supplied false certifications to the campaign.

53. The contributions made by the Lums enabled them to attend fund raising events personally attended by Senator Edward Kennedy and other politicians, including the President of the United States. The Lums attended a fund-raising event at Senator Kennedy's home following their June 1994 illegal conduit contributions.

54. As noted in paragraph 38, the Lums also attended a more expensive fund-raiser at Senator Kennedy's home in September 1994. Ten days before the event, the Lums issued a series of eight checks from their corporation, Dynamic Energy Resources, Inc. to individuals associated with the company. The total amount of the checks was $20,009.26. Four days later, those individuals directly and indirectly contributed $20,000 to the Kennedy for Senate campaign. The Lums were credited by the Campaign with bringing in approximately $38,000 in connection with this event, and Nora Lum was seated with President Bill Clinton and Senator Edward Kennedy at the dinner table during the event.

July 1994 Price Campaign Contributions

55. Stuart Price left Dynamic Energy in June 1994 to run for Congress from the First Congressional District of Oklahoma. On July 19, 1994, he held a fund-raising event in Washington, D.C. Michael Brown was asked to be the Co-Chair for the event and to work toward raising $10,000. On July 18, 1994, Dynamic Energy checks 1587 and 1588 were issued to Michael Brown and Trisha Lum. Mr. Brown received $10,000 and Trisha Lum received $5,000. *(Described in paragraphs 25 and 26)*

56. Mr. Brown deposited his $10,000 Dynamic Energy check into his checking account on July 19, 1994. On July 21, 1994, Mr. Brown wrote a total of $8,000 in checks on his account that resulted in contributions to the Price campaign, from himself and three other conduits. The Lums understood that these Dynamic Energy funds would be used for this purpose.

57. Dynamic Energy check number 1588 in the amount of $5,000 was issued to Trisha Lum on July 18, 1994. Trisha Lum and individuals associated with her made a total of $5,000 of contributions to the Price campaign on July 19, 1994.

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58. Trisha Lum withdrew $1,500 in cash from her credit union account on July 19, 1994. On that date, a total of $1,500 in American Express money orders were purchased in the name of Nickie Lum and Dimitri Seigel, Trisha's fiancé. The $1,500 in money orders were provided to the Price campaign on July 19, 1994, as contributions by Nickie Lum and Seigel. Also on July 19, 1994, Trisha Lum made a $500 contribution to the Price campaign in her own name.[3]

59. On July 19, 1994, Tong Soo Chung, Trisha Lum's co-worker at the Department of Commerce, made a $1,000 contribution to the Price campaign, for which Trisha reimbursed him in cash. On the same date, Gilbert Colon, Trisha Lum's supervisor, made a $2,000 contribution to the Price campaign. The Lums solicited these contributions and arranged for Chung and Colon to be reimbursed in cash for these contributions. Trisha Lum supplied the $3,000 in cash.

Additional Contributions and Expenditures

60. In addition to the above-described contributions, most of which are listed in the Factual Basis for Plea, there are a number of additional contributions that were funded by Nora Lum. Nickie Lum, another of the Lums' daughters, then a student at Princeton, made a $1,000 contribution to Kennedy on June 18, 1994. Her check was dated April 9, 1994, but before her check was actually submitted to the Kennedy campaign, on May 8, 1994, Nora Lum gave Nickie a $1,000 check. Trisha Lum also contributed $1,000 to the Kennedy campaign in June 1994, and it appears that Nora Lum provided her with at least a portion of the funds to do so.

61. In addition to her September 1994 Kennedy contribution, Kathy Nojima was reimbursed on several other occasions. In May 1994, she received a $1,600 check from Nora Lum, and deposited $1,500 into her State Bank account in Tulsa. Within a few days, she made a $1,000 contribution to the Price campaign.

62. In August 1994, Nora Lum also arranged for her daughter, Trisha, to make a $10,000 contribution to the Democratic Congressional Campaign Committee (DCCC). Nora Lum deposited personal and corporate funds into a joint account, and Trisha Lum made her $10,000 contribution from that account. *[Basis for guilty plea of Trisha Lum]*

63. There is also evidence of expenditures by Dynamic Energy in support of the Price campaign, none of which were reported to the FEC as contributions. The largest expenditures were incurred in connection with Stuart Price's campaign in Tulsa. In October 1994, the Lums arranged for Eric Hubbard, then a Dynamic Energy employee,

[3] The Lums have not acknowledged that the contributions were funded or reimbursed by the check from Dynamic Energy, and Dimitri Seigel's attorney has indicated that Seigel would claim that he bought his money orders with his own funds. As a result, these $2,000 in contributions are not included in the Factual Basis for Plea.

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to spend one or two weeks in Tulsa, most of which he spent working on Price's campaign. Dynamic Energy paid for Hubbard's travel and lodging, and he remained on the Dynamic Energy payroll. According to the Government, Hubbard said he spent time during the first three or four days working on Dynamic Energy natural gas matters, before he was instructed by Nora Lum to focus his attention on the Price campaign and their effort to "get out the vote" in the mostly African-American neighborhood of North Tulsa. Hubbard worked with Price himself during the remainder of his time in Tulsa, visiting churches and attempting to get votes in the African-American community.

64. The Lums also arranged for Roderick Ewell, an African-American minister from Southern California, to spend more than a month in Tulsa campaigning for Price. Ewell was not an employee or consultant for Dynamic Energy, other than his work on the Price campaign, and that is the only work he was asked to do by the Lums. After Nora Lum contacted Ewell and he agreed to come to Tulsa, she sent him a consulting agreement which did not mention any campaign work. Instead, the agreement stated that Ewell was to act as "a consultant on human resources to advise DERI on a community service project with Langston University." Ewell did not do any such work, and he was not asked to do so. Under his agreement with Dynamic Energy, Ewell was paid $1,500 at the outset, and $1,000 per week thereafter, for a total of $7,500. Dynamic Energy also paid Ewell's airfare and lodging costs, as well as for the cost of a rental car in Tulsa. Ewell worked exclusively on the Price campaign in Tulsa, and he attended numerous gatherings with Price.

Victim Impact

65. There are no specific or discernable victims associated with this offense.

Adjustment for Obstruction of Justice

66. There is no information at this time suggesting the defendant obstructed or attempted to obstruct justice in this case.

Adjustment for Acceptance of Responsibility

67. The defendant acknowledged his criminal conduct to the Court and, under the terms of a written plea agreement, pled guilty to a felony one-count Information. Lum has also agreed to meet with Government attorneys and investigators to undergo a full debriefing.

68. The defendants, through their counsel, provided a signed statement that reads...

> We have entered a plea of guilty to conspiracy, and we acknowledge engaging in the unlawful conduct described in the factual basis for our plea. We regret our actions.

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> We became active in politics because we believed that the Asian–Americans were under represented in the political and electoral process. Our motives have always been to encourage more Asian–Americans to participate in that process and to promote the candidacy of person who be believed were sympathetic to causes affecting Asian–Americans.
>
> In following these objectives, however, we crossed the line and engaged in illegal conduct. We acknowledge that we evaded the limits on individual contributions to the Kennedy and Price campaigns by enlisting various people to allow us to use their names for contribution to those campaigns, and by making donations to those campaigns in the names of people who were unaware we were doing so. We also admit to using corporate funds improperly to reimburse people for political contributions. In the course of this conduct, we knew that false information would be provided to the Federal Election Commission.
> We are ashamed of what we did and we accept full responsibility for our actions. We are very sorry for the burdens we have caused to others as a result or our conduct and we will do everything we can to right the wrongs we have committed.

69. During meetings and conversations with the probation office, the Lums were cooperative and seemingly forthright in providing information regarding their personal backgrounds and their business activities. They also openly discussed the instant offense with respect to the illegal activities outlined in the Factual Proffer.

70. Although she conceded that her contributions provided her access to high ranking elected officials, Mrs. Lum asserted that her only goal was to "push for more Asian–Americans in the Executive branch." "Kennedy," she said, "was supportive of our efforts. [The contributions] were not for our gain or attention."

71. Both Mr. and Mrs. Lum said they are deeply sorry for involving their children in the instant offense. "We always stressed hard work and honesty," Mrs. Lum said, "only to associate them with something illegal."

Offense Level Computation

72. We have used the 1995 edition of the *Guidelines Manual* to apply the following guidelines. Under *Appendix A, Statutory Index*, several potential guidelines are listed for a violation of 18 U.S.C. § 371. Of those listed, §2C1.7, *Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions*, appears to be the guideline most analogous to the offense conduct.

73. **Base Offense Level:** U.S.S.G. § 2C1.7(a) sets a base offense level of 10. 10

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74. Specific Offense Characteristics: None 0

75. Victim-Related Adjustment: None 0

76. **Adjustment for Role in the Offense:** The offense conduct occurred from on or about March 1994 through 1995. During this period, the Lums used several methods and many individuals to funnel contributions to the Kennedy and Price campaigns. In addition to the defendants, the offense involved other criminally responsible participants. These included Trisha Lum, Michael Brown, and Kathy Nojima. In doing so, the Lums established controls and procedures to keep track of conduit contributions to ensure that these conduits did not exceed FEC limits to avoid scrutiny. Under §3B1.1(a), the defendant was an organizer of a criminal activity involving five or more criminally responsible participants or was otherwise extensive. +4

77. **Adjusted Offense Level (Subtotal):** 14

78. **Adjustment for Acceptance of Responsibility:** As detailed earlier in the report, the defendant has clearly demonstrated an acceptance of responsibility for the criminal conduct. Under U.S.S.G. § 3E1.1(a), the offense level is reduced by 2 levels. -2

79. **Chapter Four Enhancements:** None 0

80. **Total Offense Level:** 12

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

81. The defendant has no known record of juvenile adjudications.

Adult Criminal Conviction(s)

82. Federal, as well as state and local record checks in Hawaii, California, and Oklahoma did not uncover any record of arrests or convictions. Lum has an Oklahoma driver's license.

Criminal History Computation

83. The total criminal history score is zero, and the criminal history category is I. *See* Sentencing Table (Chapter 5 Part A).

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PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

84. Gene Kung Ho Lum was born in Honolulu, Hawaii on [redacted]. He is the eldest two children born to his father, Kun Yin Lum, and his mother, Minnie C. Lum. His parents, both age 82, are retired and live at [redacted]. Lum said he has little contact with his 49-year old sister, Janice J. Jong, who lives in Concord, California with her husband and family.

85. After completing earning his law degree in 1964, Lum married his first wife, Naomi Tanabe Lum, on [redacted] in San Francisco. They had one child, Jon Philip Lum, who is now 28 years old. The couple divorced in 1969.

86. Gene Lum married Nora Takeko in Fremont, California on [redacted], and three daughters were born to their marriage. The oldest daughter, Trisha Lum Siegel, is 28 years old and lives with the defendants at [redacted]. Trisha graduated in 1993 from the University of San Francisco with a Bachelor of Arts degree. She married Dimitri Siegel on [redacted]. She now runs a business that is owned by the Lum family, L.A. Sound International. The company imports car stereo equipment from Korean and Chinese manufacturers for wholesale in the U.S. The family is also acquiring a California business license for Ki International, a company they are establishing to market a CD-Rom changer for computers. Mr. and Mrs. Lum said this endeavor has proven to be fairly unsuccessful.

87. The Lum's second daughter, Maxine R. Lum Mauricio, is 26 years old and lives at [redacted]. Telephone [redacted]. Ms. Mauricio earned an undergraduate degree from Dartmouth and a law degree in 1996 from Harvard. She is now an associate with the Boston law firm of Ropes & Gray. Telephone [redacted]

88. The Lum's youngest daughter is 21-year old Nickie M. Lum. She is a May 1997 graduate of Princeton University and is now employed with the family business in Los Angeles. Nickie also lives with her parents in Long Beach. She is working to establish a music promotion business in Los Angeles called Tiger Records.

89. The defendants reared their family in Honolulu in what all of them described as an upper middle class lifestyle. They reported that there was "an excellent home atmosphere." It appears that the Lum family members are close and supportive of one another.

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Lum History in Relation to the Instant Offense

90. During 1994 and 1995, Nora and Gene Lum were residents of Tulsa, Oklahoma, although they also had residences in Washington, D.C., and Honolulu, Hawaii. Before moving to Tulsa, they had been active in politics in Hawaii for many years, including fund-raising activity for former Governor John Waihee. In 1992, the couple moved to the Los Angeles area to raise money and organize the Asian Pacific vote for the Clinton/Gore ticket. The Lums helped establish the Asian Pacific Advisory Council (APAC) and a related entity, APAC-Vote, which was touted as an affiliate of the Democratic National Committee (DNC) that furthered the political interests of Asian Pacific Americans and raised funds for Bill Clinton.[4] The Lums had also personally raised substantial funds and made substantial contributions to the DNC. Nora and Gene Lum met Michael Brown, the son of former Secretary of Commerce, Ron Brown, during the 1988 Michael Dukakis campaign. The Lums became acquainted with Ron Brown while he was chairman of the DNC.

91. In 1993, the Lums moved to Tulsa, Oklahoma, where Mrs. Lum formed Dynamic Energy Resources, Inc. (a Delaware corporation) to purchase the assets of a then struggling natural gas company, Gage, Inc., for approximately $9 million. The assets consisted largely of a section of pipeline, gas contracts and a processing plant near Tulsa, Oklahoma. At the time, Oklahoma Natural Gas (ONG) was the only Gage customer, and it had begun reducing its purchases from Gage, resulting in civil suits filed by Gage against ONG. As part of the sale of Gage to the Lums, ONG offered them a contract to purchase natural gas, contingent upon the withdrawal of the lawsuit filed by Gage. After taking over Gage, Dynamic Energy received a substantial contract from ONG, grossing Dynamic Energy $18 million.

92. Nora Lum was Chairman of the Board and the majority shareholder of Dynamic Energy, but Gene Lum had no financial interest in the company, but was listed as a Director. The Lums named several other family members, friends, and associates to the Board of Directors, and provided them with a small number of shares in the company without cost. From the ONG contracts, the Lums retained $5.2 million and Stuart Price received $2.5 million. Additional amounts were distributed to other share holders, including Michael Brown, who had been given a 5% stake in the company when the Lums placed him on the Board of Dynamic Energy.

---

[4] According to the Sacramento Office of the California Secretary of State, APAC-Vote, Inc. had offices at 1000 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. The registered agent for APAC-Vote, Inc. was David C. Tseng. APAC-Vote, Inc. was registered as a domestic non-profit mutual benefit corporation on June 8, 1993. APAC's license to do business in California is suspended.

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93. The Lums had enlisted the services of Stuart Price, an Oklahoma businessman, to put the natural gas deal with Gage together, and then to run the company since the Lums had no experience in the gas business. The Price family in turn held a substantial interest in Dynamic Energy.

94. Price, a former Oklahoma finance chairman for the Clinton 1992 Presidential Campaign, left Dynamic Energy to run for Congress from Tulsa in June 1994. After Price lost the 1994 election to Steve Largent, Linda Price, Stuart Price's wife, filed suit in Oklahoma State Court (Tulsa, CJ-95-1948). Price alleged Nora Lum had "taken advantage of their power and control over the corporation to systematically loot its assets for their personal benefit and for the benefit of certain of their friends and relatives." Specifically, Linda Price accused the Lums of using Dynamic Energy to gain political influence and to funnel campaign contributions. The lawsuit, which was filed in May 1995, continued until February 9, 1996, when it was dismissed after the Lums settled with Stuart Price for, according to the Lums, approximately $150,000 in cash and Ramco stock valued at $450,000.

95. Dynamic Energy filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Northern District of Oklahoma in September 1995. In case number 95-03029-C, Dynamic Energy also filed a Complaint for Turnover of Property against the law firm of Riggs, Abney, Neal, Turpen, Orbinson and Lewis (RANTOL). Dynamic Energy sought to regain property, or stocks, that Price had taken from the corporation and delivered to RANTOL for safekeeping. The Chapter 11 filing also included a complaint against Enogex Services Corporation, a subsidiary of ONG, involving a Dynamic Energy debt. Dynamic Energy submitted a plan of Reorganization in June 1996, and the case remains open with outstanding debts of $1.6 million, although Mr. Lum advised us that all debts, except those to Nora Lum, have been paid. The company still owns a Honolulu condominium and a Lake Manassas, Virginia country club membership.

96. Dynamic Energy maintains a corporate office at [redacted] Tulsa, Oklahoma [redacted] Telephone [redacted] Our officers in Tulsa visited the office several times but never found anyone present in the office suite. Kathy Nojima told us that the office was vacant at the time because she was visiting the defendants in Los Angeles.

Physical Condition

97. Lum is 5 feet 7 inches tall, weighs approximately 175 pounds, has black hair, brown eyes and a birthmark on his left hip. He told us that he is in good health and no history of serious health problems.

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Mental and Emotional Health

98. The defendant reported that he has no history of mental or emotional health problems and has never been under the care of a psychiatrist.

Substance Abuse

99. The defendant said that he has never used illegal drugs, and he added that he does not have a history of alcohol abuse.

Education

100. Mr. Lum earned a Juris Doctorate from the University of California, Hastings College of Law, San Francisco, in 1964. He completed his undergraduate work in 1961, graduating with a Bachelor of Arts degree from the University of Hawaii.

101. According to the Hawaii Bar Association, Lum is an active member of the Bar in *Good Standing*. The bar would not tell us if any complaints were filed against Mr. Lum, or if any disciplinary actions were ever taken by the association against him.

Employment Record

102. The defendant advised us that he has been retired since 1992. He said he primarily advises his wife and other family members on business operations, but "leaves the running of [the family businesses]" to his wife and children.

103. According to court records in the Northern District of Oklahoma, a civil suit (96CV0118B) was filed by L.A. Sound International and Michael Brown against Richard Bertsch and the Metrosound Corporation of Los Angeles, California for trademark infringement, illegal transfer of equity stocks, and over a non-competition agreement.

104. Court records show that the Lums—through a holding company called RMC International, a Nevada Corporation owned and directed by Nora Lum—purchased the company sometime between January and April 1995. In doing so, the Lums loaned the company $1 million to finance operations. Richard Bertsch was president of the company after the purchase.

105. In January 1996, the Board of Directors, consisting of Nora, Gene and Trisha Lum, fired Bertsch as President of the company and replaced him with Gene Lum. The suit, dismissed with prejudice on December 31, 1996, indicated that Bertsch engaged in disruptive practices and attempted to use the L.A. Sound International trademark on

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similar electronic products that were to be sold in the U.S. The Lums indicated that Trisha Lum is now President of L.A. Sound International.

106. From 1966 to 1992, Lum said that he was in solo practice as an attorney and earned an average annual salary of $100,000. He specialized in real estate development law in Hawaii, working to help developers with state and local planning laws and regulations.

107. While working as a real estate attorney in Hawaii, Lum also worked part time, from January 1988 to January 1990, as a $1,000 a month aide to the Planning Committee of the Honolulu City.

108. Mr. Lum told us that he was the subject of a 1992 investigation by the County of Hawaii's County Attorney. This investigation involved allegations that the Lums made illegal contributions to the Hawaii County mayor in return for favorable treatment on land decisions concerning a proposed golf course development. Lum said that the County Attorney's Office concluded that the allegations were unfounded. He added, that to his knowledge, there was no federal involvement in this investigation.

109. In 1985, Mr. Lum was a consultant to a Japanese developer that was building golf courses in Maunawili Valley on Oahu. According to Mr. Lum, the project drew intense opposition from environmentalists and local civic groups. In 1989, there was an allegation that Mr. Lum, between 1986 and 1988, encouraged his Japanese clients to make over $60,000 in illegal campaign contributions to Hawaiian politicians who could help approve the development of the land. According to Mr. Lum and his attorney, he was not charged with any crimes, although the contributions were returned and civil penalties were levied against the donors.

110. Finally, a $600,000 Summary Judgment was entered against Mr. Lum in 1993 by a Hawaii state court. The defendant appealed, and in 1996 the Intermediate Court of Appeals of Hawaii, in 81 Hawai'i 501, 918 P.2d 1157, reversed the lower court and remanded the case for further hearings. Attorney Darwin Ching (808–536–7888) represented the defendant in this case. He said that plaintiffs Southwest Slopes, Inc. and Robert L. Rice, submitted fraudulent information to the Court in the original suit, and it was on this basis that the Summary Judgment was overturned.

Financial Condition: Ability To Pay

111. The Lums, acting on the advice of their counsel, declined to provide the U.S. Probation Office with access to their bank records. They also declined to complete the Personal Financial Statement that details all personal and business income, assets, and debts. The defendants also declined to execute releases granting this office access to credit reports or other financial records.

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112. Counsel noted that paragraph 10 of the *Plea Agreement* reads...

> [D]efendants understand that the United States is conducting and/or will conduct an investigation of possible offenses arising from tax-returns filed or required to be filed by Nora Lum, Gene Lum, and Dynamic Energy Resources, Inc. ("DERI") and/or any employee, shareholder or directory of DERI (hereinafter "tax related offenses"). Nothing in this agreement shall prohibit the United States from prosecuting the defendants for any tax related offenses, as described herein....

113. Counsel also noted that paragraph 5 of the *Plea Agreement* provides, in part, that "the defendants will not be required to waive their Fifth Amendment privileges against self-incrimination concerning the matters still prosecutable under the terms of paragraph 10 herein in order to satisfy their obligation to cooperate under this agreement."

114. Although the Lums have declined to provide any financial information to the Court at this point, they concede that they "can afford to pay the maximum guideline fine that could be imposed under any guideline range that would likely apply in this case."

115. Real property records in Hawaii, Oklahoma, and the District of Columbia reflect that the Lums, either jointly or individually own the following properties:

[redacted] (listed on property records as owned by Nora Takeko and Trisha Lum. Counsel noted that Trisha recently transferred her interest to Nora Lum)
Washington, D.C. [redacted]
Tax assessed value [redacted]

a) [redacted]
Tulsa, Oklahoma [redacted]
Tax assessed value of [redacted]

b) [redacted] listed on property records as owned by Gene Lum, through counsel noted that Gene Lum believed he transferred ownership several years ago to Nora Lum)
Honolulu, Hawaii [redacted]
Estimated value o[redacted] based on sales of similar homes in area

c) [redacted]
Honolulu, Hawai[redacted]
Value unknown

d) [redacted]
Waianne, Hawa[redacted]
Tax assessed value [redacted]

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116. As noted in paragraph 105, Mrs. Lum, with others, owns 50% interest in the Akahi Joint Venture, a corporation that owns 300 acres of land in Kona, Hawaii. The Lums said that the property is listed for sale at $8 million. The listed brokers are Osamu Murata and May Murakami. Telephone [redacted] When we called Mr. Murata to ask about the property, he asked how we heard about it. After explaining our reason for calling, he said he didn't know what we were talking about—but proceeded to tell us the land was no longer for sale—before abruptly hanging up the phone. He did not respond to additional phone calls, and we have been unable to locate public records concerning the land.

117. The only public debt we located for Mr. Lum was a [redacted] federal tax lien.

PART D. SENTENCING OPTIONS

118. **Statutory Provisions:** A term of not more than 5 years imprisonment is authorized for this Class D felony. 18 U.S.C. § 371

119. **Guideline Provisions:** Based on a total offense level of 12 and a criminal history category of I, the guideline range of imprisonment is from 10 to 16 months.

Impact of Plea Agreement

120. The parties agreed that the Sentencing Reform Act of 1984 is applicable in this case. The Government agreed that, should the defendants continue to "clearly demonstrate acceptance of responsibility for the instant offense," they will recommend that they each receive the applicable reduction for acceptance of responsibility under U.S.S.G. § 3E1.1.

121. The Government also agreed that it will not seek an upward departure so long as the total offense level calculated by the Court at sentencing, including any reduction for acceptance of responsibility, is 14 or greater. If the total offense level is 13 or less, the Government retained the right to seek an upward departure to level 14. The defendants retained the right to oppose any upward departure request without the Government seeking to withdraw its support for an adjustment for acceptance of responsibility.

Supervised Release

122. **Statutory Provisions:** A supervised release term of no more than 3 years is authorized for Class D felony convictions. 18 U.S.C. § 3583(b)(2)

123. **Guideline Provisions:** If a term of imprisonment of one year or more is imposed, the Court shall also order a term of supervised release to follow imprisonment. U.S.S.G. § 5D1.1(a). The term for a Class D felony shall be at least 2 years but no more than 3 years. U.S.S.G. § 5D1.2(a)(2)

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124. Under U.S.S.G. § 5C1.1(d)(2), the Court may satisfy the minimum of the guideline range by 1) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention on a 1:1 ratio, provided that at least one-half (5 months) of the minimum term is satisfied by imprisonment.

Probation

125. **Statutory Provisions:** The Court may impose a probation term that, if imposed, shall be at least 1 year but no more than 5 years. 18 U.S.C. § 3561(c)(1)

126. **Guideline Provisions:** A term of probation is not authorized when the applicable range is in Zone C or D. U.S.S.G. § 5B1.1, comment. (n.2)

Fines

127. **Statutory Provisions:** A fine of not more than $250,000 is authorized. 18 U.S.C. § 3571(b)(3)

128. **Guideline Provisions:** The fine range for this offense is from $3,000 to $30,000. U.S.S.G. § 5E1.2(c)(3)

129. A special assessment of $50 (when the offense occurred and concluded prior to April 24, 1996, the lower assessment is applicable) is mandatory. 18 U.S.C. § 3013(a)(2)(A)

130. Subject to the defendant's ability to pay, the Court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release, pursuant to U.S.S.G. § 5E1.2(i). The most recent advisory from the Administrative Office of the U.S. Courts suggests that a monthly cost of $1,910.17 be used for imprisonment; a monthly cost of $217.18 for supervision; and a monthly cost of $1,186.25 for community confinement.

Restitution

131. Restitution is not an issue in this case.

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PART E. FACTORS THAT MAY WARRANT DEPARTURE

132. The presence of information in this section does not necessarily constitute a recommendation for a departure.

Downward Departure

133. The Government may file a departure motion pursuant to U.S.S.G. § 5K1.1 prior to or at the time of sentencing.

Upward Departure

134. The Court may consider an upward departure under the U.S.S.G. § 2C1.7, comment. (n. 5). In this application note, the Sentencing Commission advises that the Court may consider an upward departure if the Court finds that the "defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause the loss of public confidence in government."

135. The Court may also consider whether the guideline, §2C1.7, adequately considers the monetary value of the illegal campaign contributions. Since this case does not involve a loss, this guideline does not consider the amount of the illegal campaign contributions involved in the instant offense. For example, a defendant who illegally contributed $3,000 to a federal campaign would receive a sentence similar to a defendant who contributed much more. If the Court believed it is necessary to quantify the contributions under the guidelines to determine a total offense level, it could look to the loss table of U.S.S.G. § 2F1.1., which is cross referenced in §2C1.7(b)(1)(A).

136. Under U.S.S.G. § 2F1.1(b)(1)(F), for example, the Court could determine that if the contribution amount was more than $40,000 but less than $70,000, there could be an offense level increase based on the amount contained in that guideline. In this case, that would equate to a five-level increase. If applied to the instant offense, the Adjusted Offense Level would be 19, and the total offense level would be 16 (because the Adjusted Offense Level would be 16 or more, the defendant would qualify for a 3-level Acceptance of Responsibility adjustment rather than the current 2 levels).

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137. A total offense level of 16 and a criminal history category of I results in a guideline imprisonment range of 21 to 27 months and a fine range of $5,000 to $50,000.

Respectfully submitted,

RICHARD A. HOUCK, JR.
Chief U.S. Probation Officer

by: _____
Mark McCroson
U. S. Probation Officer

Reviewed:

_____ 8/4/97
Tobin P. Sullivan Date:
Supervising U.S. Probation Officer

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ADDENDUM TO THE PRESENTENCE REPORT

Disclosure/Objection Chronology

The presentence report was disclosed to counsel on July 16, 1997. Counsel for the Government submitted the Receipt and Acknowledgment Form on July 25, 1997, and counsel for the defendant submitted the form on July 30, 1997.

OBJECTIONS

By The Government

The Government noted no material, factual inaccuracies and no objections.

By the Defendant

Counsel for the defendant noted several non-material factual inaccuracies and "clarifications". The final edition of the report was modified—without impacting the guidelines— to correct these inaccuracies.

With respect to the Part E. *Factors That May Warrant Departure*, counsel noted that defendant objects to any application by the Government for upward departure from the total offense guideline of 12 on the ground that any such departure is unwarranted by the offense and inconsistent with the applicable guidelines.

Respectfully submitted,

RICHARD A. HOUCK, JR.
Chief U.S. Probation Officer

by: Mark McCroson
Mark McCroson
U.S. Probation Officer

Reviewed:

Todd P. Sullivan Date: 8/4/97
Supervising U.S. Probation Officer

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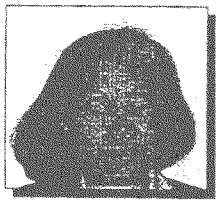
Identifying Data:

Date of Birth:	[redacted]
Age:	54
Race:	Asian
Sex:	Female
SSN:	[redacted]
FBI No.:	None assigned
U.S. Marshal No.:	Reg. No. [redacted]
Other ID No.:	None
Education:	Some college
Dependants:	None
Citizenship:	United States
Place of Birth:	Honolulu, Hawaii
Legal Address:	[redacted] Long Beach, California 90802 [redacted]
Full Name:	Nora Takeko Lum



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PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. On May 21, 1997, a one–count Criminal Information was filed in the U.S. District Court for the District of Columbia charging Nora T. and Gene K.H. Lum with Conspiracy, 18 U.S.C. § 371.

2. On June 5, 1997, in accordance with a written plea agreement, each defendant entered a guilty plea to the Information. In addition to pleading guilty, the defendants agreed, among other terms, to cooperate with the Public Integrity Section of the U.S. Department of Justice. In return, the Government agreed to forego prosecuting the defendants for conduct now known to the Public Integrity Section or to law enforcement agencies working with the Public Integrity Section, or for offenses relating to campaign financing laws committed before [May 16, 1997.] As contained in paragraph 10 of the plea agreement, the parties agreed that, with some exceptions, the Lums may still be prosecuted for tax–related violations.

Related Case

3. In Criminal No. 97–0208, Trisha C. Lum pled guilty to a one–count Information charging her with Contribution in the Name of Another, in violation of 2 U.S.C. § 441f and Penalty for the Violation of the Federal Election Campaign Act, 2 U.S.C. § 437g(d)(1)(A), a Class A misdemeanor punishable by a term of imprisonment of not more than 1 year and a fine of not more than $25,000 or 300% of the contribution involved in the offense. Sentencing is scheduled for August 27, 1997.

The Offense Conduct

History of the Investigation

4. The Government's investigation into the Lums' conduit campaign contributions of approximately $50,000 to the Kennedy for Senate, Kennedy for Senate 2000, and Stuart Price for Congress campaigns in 1994 and 1995 began after the Office of the Independent Counsel closed its investigation of former Secretary of Commerce, Ron Brown, following his death in Croatia. Parts of the Independent Counsel's investigation of Ron Brown's son, Michael Brown, were turned over to the Public Integrity Section of the U.S. Department of Justice. During the Government's investigation into a $150,000 distribution paid to Michael Brown by Dynamic Energy, it became apparent to them that conduit campaign contributions were being made by the company and the Lums. At this time, the Government has not filed charges against any other party as a result of this investigation.[1]

[1] Another distribution was made to Brown on March 31, 1995, by check no. 2420, for $37,822.

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Factual Basis For Plea (filed with the Court on May 21, 1997)

5. At all times relevant to the Information and the Factual Basis for Plea, defendants *Nora T. Lum and Gene K.H. Lum* were aware that the following actions were prohibited:

(a) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's primary election;

(b) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's general election;

(c) for any person to make a contribution in the name of another person to the campaign of a candidate for federal office; and

(d) for any corporation to make a contribution to the campaign of a candidate for federal office.

6. At all times relevant to the Information and Factual Basis for Plea, defendants *Nora T. Lum and Gene K.H. Lum* were aware that the campaign of a candidate for federal office was required by federal law to provide information regarding contributors and contributions to the Federal Election Commission (FEC).

7. On May 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and caused those money orders to be submitted to the Kennedy for Senate Campaign as contributions in the names of two straw contributors on May 25, 1994 and June 20, 1994.

8. On May 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and contributed those money orders to the Kennedy for Senate Campaign as a contribution in the name of a straw contributor on June 20, 1994.

9. On May 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* provided $2,000 to a conduit contributor, and caused the conduit and another person to use those funds to make contributions to the Kennedy for Senate Campaign in their own names in the total amount of $2,000 on May 25, 1994.

10. On or about September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy Resources, Inc. ("Dynamic Energy") check number 1783 in the amount of $2,000 to be issued to an employee of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign. Defendants caused the employee to make a $2,000 contribution to the Kennedy for Senate Campaign using those funds on September 23, 1994.

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11. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1781 in the amount of $3,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign. Defendants caused the employee to contribute $3,000 to the Kennedy for Senate Campaign in his own name and the name of his spouse on September 23, 1994.

12. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1787 in the amount of $2,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbusement for contributions to the Kennedy for Senate Campaign. Defendants caused the daughter of the shareholder/director to make a $2,000 contribution to the Kennedy for Senate Campaign in her own name on September 23, 1994.

13. On or about September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1786 in the amount of $5,000 to be issued to a shareholder, director, and officer of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate Campaign. On September 23, 1994, defendants and the shareholder, director, and officers of Dynamic Energy caused $5,000 in contributions to be made to the Kennedy for Senate Campaign in his own name and the names of three other conduit contributors.

14. In or about September 1994, defendants *Nora T. Lum and Gene K.H. Lum* asked an employee of Dynamic Energy to make a $1,000 contribution to the Kennedy for Senate Campaign. The employee submitted receipts to Dynamic Energy which reflected that the employee had incurred expenditures on behalf of Dynamic Energy. On September 19, 1994, defendants caused Dynamic Energy to issue Dynamic Energy check number 1788 to the employee in the amount of $1,009.26, with the notation "reimbursement." With defendants' knowledge, the employee made a $1,000 contribution to the Kennedy for Senate Campaign in her own name on September 23, 1994.

15. On September 19, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1782 to be issued to defendant *Nora T. Lum* in the amount of $3,000, with the notation "reimbursement." Defendant *Nora T. Lum* deposited those funds into her personal checking account at State Bank & Trust in Tulsa, Oklahoma.

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16. On September 19, 1994, defendants used funds from defendant *Nora T. Lum's* personal checking account at State Bank & Trust to purchase two money orders in the amount of $1,000 each, and used those money orders to make contributions to the Kennedy for Senate Campaign in the names of two straw contributors on September 23, 1994. Between September 17, 1994, and September 23, 1994, defendants provided $1,000 to a consultant for Dynamic Energy, in the form of a check drawn on defendant *Nora T. Lum's* personal checking account at State Bank & Trust, and caused the consultant to use those funds to make a $1,000 contribution to the Kennedy for Senate Committee in his own name.

17. On March 31, 1995, defendants *Nora T. Lum and Gene K.H. Lum* used $10,000 from a bank account in the name of *Nora T. Lum* to purchase ten American Express money orders in the amount of $1,000 each.

18. On April 4, 1995, defendants *Nora T. Lum and Gene K.H. Lum* caused the ten $1,000 money orders described in the preceding paragraph to be submitted to the Kennedy for Senate and Kennedy for Senate 2000 Campaigns as contributions in the names of straw contributors.

19. On February 2, 1995, defendants *Nora T. Lum and Gene K.H. Lum* purchased a $1,000 cashier's check and submitted the cashier's check to the Kennedy for Senate 2000 campaign as a contribution in the name of a straw contributor.

20. On April 2, 1995, defendants *Nora T. Lum and Gene K.H. Lum* provided a conduit contributor with $2,000 and caused the conduit to make $2,000 in contributions to the Kennedy for Senate Committee that were recorded in the conduit's own name and in the name of the conduit's spouse. Defendants provided the conduit with the funds in the form of two checks: the first check was a check on *Nora T. Lum's* personal account in the amount of $750, and the second was Dynamic Energy check number 2444 in the amount of $1,250.

21. Shortly before July 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* became aware that a shareholder, director, and officer of Dynamic Energy had been asked to raise $10,000 in contributions for the Stuart Price for Congress Campaign. On July 18, 1994, defendants *Nora T. Lum and Gene K.H. Lum* caused Dynamic Energy check number 1587 to be issued to this shareholder, director and officer of Dynamic Energy in the amount of $10,000. Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Stuart Price for Congress Campaign. On July 25, 1994, defendants and the shareholder, director, and officer caused $8,000 in contributions to be made to the Stuart Price for Congress Campaign in his own name and the names of three other conduit contributors.

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22. In or about July 1994, defendant *Nora T. Lum* asked two conduit contributors to make contributions to the Stuart Price for Congress Campaign. On or about July 19, 1994, defendants caused these two conduit contributors to submit $3,000 in contributions to the Stuart Price for Congress Campaign. Defendants caused another person to reimburse these conduit contributors with $3,000 in cash.

23. Defendants *Nora T. Lum and Gene K.H. Lum* caused the Kennedy for Senate and Kennedy for Senate 2000, and Stuart Price for Congress to file reports with the FEC which falsely reported the names of the conduit and/or actual straw contributors described above, and concealed the actual source of the contributions. *[end of proffer]*

24. The contributions listed in the proffer total $49,000.

Additional Background Information on Conduct
(Information contained in this section elaborates on the contributions and conduct described in the Factual Proffer in Support of Plea. Other then including $2,500 in contribution made by Siegel family members, which they claim were legitimately made, this section does *not* allege contributions in excess of the $49,000 set forth in the Factual Proffer)

25. In July 1994, Dynamic Energy issued to two consecutive checks, one to Michael Brown in the amount of $10,000, and one to Trisha Lum, Nora and Gene Lum's daughter, in the amount of $5,000. Brown and Trisha Lum used those funds to make conduit contributions to the Price campaign in the total amount of $13,000 using her own name, the name of her sister, Nickie Lum, and the name of her fiancé, Dimitri Seigel. She also gave to Commerce Department employees $3,000 in cash to reimburse them for their contributions to the Price campaign. Trisha Lum also took a leave of absence in the fall of 1994 to volunteer for the Kennedy campaign in Boston.

26. Among the Lums' three adult daughters, Trisha Lum was the most involved in the Lums' political activity. She graduated from the University of San Francisco in 1993 with a Bachelor of Science degree in Political Science. Before graduating, however, she took a leave of absence from school in 1992 to work with her parents on the Clinton presidential campaign. After the election, Trisha Lum obtained a position with the Department of Commerce, but she was not given any interest in Dynamic Energy because of her position with the Department of Commerce.

27. Paragraph deleted and incorporated with paragraph 25.

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May and June 1994 Kennedy Contributions

28. Dynamic Energy, the company formed in 1993 and controlled by Nora Lum, named several of Lum family friends, associates and family members to the Board of Directors, and provided them with shares in the company. At the first meeting of the directors and shareholders of Dynamic Energy in January 1994, among other topics, Nora Lum discussed the political strategy for Dynamic Energy. According to at least one of the shareholders, Nora told them that she would occasionally ask them to contribute money to particular candidates.

29. In the spring of 1994, Dynamic Energy sold off a portion of a gas contract for a substantial profit. The Lums provided substantial distributions to themselves and the other shareholders in April 1994. Nora Lum received over $5 million, the Prices received approximately $2.4 million, and Michael Brown, a 5% shareholder, received $150,000. The family members and associates who held a one-half percent interest in Dynamic Energy each received a check for $10,000.

30. In May and June 1994, the Lums arranged several conduit contributions in connection with a fund-raising event at Kennedy's home in McLean, Virginia. The event was originally scheduled for May 20, 1994, but it was postponed to June following the death of Jacqueline Kennedy Onassis on May 19, 1994. Michael Brown was actively involved in organizing and raising funds for the event, and he introduced the Lums to the Kennedy campaign. Brown was one of three Co-Chairs of the event, and Nora and Gene were Vice-Chairs. The charge for admission to the event was $500 per person.

31. On May 1, 1994, Nora Lum made a $2,000 contribution to the Kennedy for Senate campaign, and she was thus "maxed out" for the 1994 Kennedy campaign. Her check contained the notation "1P/1G which indicated that $1,000 should be designated for the primary and $1,000 for the general election, suggesting that she was aware of the legal limits of the contributions.

32. There were several contributions that were funded directly by the Lums during this time frame. First, four $500 postal money orders were purchased in Washington, D.C., on May 18, 1994, and submitted to the Kennedy campaign in connection with the June fund raiser. The money orders were numbered sequentially, and were purchased at the same post office on the same day.

33. The first of the four money orders was in the name of Monica Aboud, a DNC employee at the time, who told the Government that she did not make the contribution. The money order was deposited by the campaign on May 25, 1994. The second $500 money order was submitted in the name of Dimitri Siegel, Trisha Lum's fiancé. This too was deposited by the Kennedy campaign on May 25, 1994.

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34. The third money order was submitted to the Kennedy campaign in the name of Marcellas Sandoval. It was deposited by the Kennedy campaign on June 20, 1994. Sandoval told the Government that she did not purchase or submit the money order herself. The fourth money order was submitted to the campaign in the name of Jacqueline Sitterle, who is Dimitri Seigel's mother.[2]

35. In addition, on May 19, 1994, two postal money orders in the total amount of $1,000 were purchased at a post office in Washington, D.C., and they were submitted to the Kennedy campaign in the name of Gilbert Colon, who was Trisha Lum's supervisor at the Department of Commerce.

36. Next, Nora Lum provided Maxine Lum with a $2,000 check on May 19, 1994. Maxine deposited the check on May 20, 1994, and the same day wrote a $1,000 check to her fiancé, Roberto. On May 25, 1994, the same day as several other Lum-related contributions were submitted to the Kennedy campaign, Maxine Lum and Roberto each contributed $1,000.

September 1994 Kennedy Contributions

37. In September 1994, the Lums were involved in another fund raiser for Kennedy. The price for preferred seats was $2,000 each, and the lesser seats cost $1,000 each. Nora Lum told the Kennedy campaign that she would bring in a total of $40,000 for this event, and would fill two "preferred" tables at $20,000 each. Nora Lum had already "maxed out" to the campaign in May 1994, and Gene Lum had already given $1,000. Through conduit and other contributions, the Lums raised approximately $38,000 for this event, earning Nora Lum a seat at the table with President Clinton and Senator Kennedy.

38. As the event approached, the Lums issued a series of eight checks from Dynamic Energy on September 19, 1994, totaling $20,009.26. Those checks were followed by $20,000 in contributions to the Kennedy campaign on September 23, 1994. The checks and contributions are described in the following table:

[2] The money orders in the name of Dimitri Siegel and his mother were not included in the Factual Basis for the Plea because Dimitri Siegel, through his attorney, indicated that he purchased and contributed these money orders himself.

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Dynamic Check Number	Amount	Payable to	September 23, 1994 Kennedy Contributions
1781	$3,000	Larry Wong	$3,000 Larry and Betty Wong
1782	$3,000	Nora Lum	$3,000 arranged by Nora Lum
1783	$2,000	Eric Hubbard	$2,000 Kevin Gray
1784	$1,000	Trisha Lum	$1,000 Trisha Lum
1785	$3,000	Gilbert Colon	$3,000 Gil and Cheryl Colon
1786	$5,000	Michael Brown	$5,000 arranged by Brown
1787	$2,000	Helen Yee	$2,000 daughter Melinda Yee
1788	$1,009.26	Kathy Nojima	$1,000 Kathy Nojima

39. All of these checks contained the notation "reimbursement." The specific amounts of the checks suggest the Lums were keeping close track of who had already contributed what amounts. For example, they had arranged $1,000 contributions by Larry Wong and Gil Colon earlier in 1994, and thus in September they were provided with the maximum $3,000 that they and their spouses could contribute. Likewise, Kathy Nojima, Nora Lum's sister, had already given $1,000, and so she was given only $1,000 to contribute in September. Eric Hubbard had not contributed earlier, and so he was given a full $2,000 to contribute.

40. Larry Wong was a director and shareholder of Dynamic Energy. According to the Government, the Lums acknowledged that they asked Wong to make $3,000 in contributions, and that they provided him with the funds to do so.

41. Nora Lum received a $3,000 "reimbursement" check on September 19, 1994. The financial records and other evidence indicate that Nora Lum deposited the check into her personal account and used $3,000 from that account to arrange $3,000 in contributions to Kennedy on September 23, 1994. Specifically, Lum gave $1,000 to Pat Owens, a Dynamic Energy consultant, who was working with the Lums in Tulsa, and directed him to make a $1,000 contribution to the Kennedy campaign. In addition, Nora Lum cashed a $2,000 personal check at State Bank on September 19, 1994, and used the funds to

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purchase two $1,000 money orders made payable to the Kennedy campaign, in the names of two family members.

42. Check number 1783 was written to Eric Hubbard, a friend and former co-worker of Michael Brown, who came to work in Dynamic Energy's Washington office in September 1994. Approximately a week before the September 19, 1994, checks were issued, Gene Lum told Hubbard, according to the Government, "I want me a Senator," and indicated that Hubbard could be helpful because Nora Lum was already maxed out to the Kennedy campaign. A few days later, Hubbard spoke to Nora Lum, and he agreed to act as a conduit. He received $2,000 from Dynamic Energy on September 19, 1994, and funneled the money through a friend, Kevin Gray, to make his $2,000 contribution to the Kennedy campaign.

43. According to the Dynamic Energy check register and the general ledger, Trisha Lum was the payee on Dynamic Energy check number 1784 in the amount of $1,000. She made a $1,000 contribution to the Kennedy campaign on September 23, 1994, along with all of the others. Dynamic Energy check 1784, however, never cleared the company account and was not included in the Factual Basis for Plea.

44. Gil Colon was in charge of Dynamic Energy's Washington office when he received a $3,000 check from Dynamic Energy on September 19, 1994. The Lums acknowledged to the Government that he was provided with these funds for the purpose of making $3,000 in contributions to the Kennedy campaign.

45. The next Dynamic Energy check on September 19, 1994, was a $5,000 check to Michael Brown, again with the notation "reimbursement." Brown used this money much as he did the money that he received from Dynamic Energy in July 1994. This time, he received $5,000 from Dynamic Energy, and he made exactly $5,000 in contributions, through himself and three other conduits, to the campaign.

46. The next September 19, 1994 "reimbursement" check was made payable to Helen Yee, a shareholder, in the amount of $2,000. The Lums arranged for this money to be passed to Yee's daughter, Melinda, and she made a $2,000 contribution to the Kennedy campaign. Melinda Yee was an employee at the Department of Commerce. According to Yee, Nora Lum told her that she would do for Melinda Yee what she did for her own daughters; that is, provide her with the funds to make a contribution.

47. The last Dynamic Energy check written on September 19, 1994, was payable to Kathy Nojima, Nora Lum's sister, in the amount of $1,009.26, with the notation "reimbursement." This check was coded in Dynamic Energy's books as a miscellaneous Tulsa expense reimbursement. Nojima contributed $1,000 to the Kennedy campaign on September 23, 1994, along with the other Lum-related contributions. Her check was dated September 15, 1994.

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48. The check register was written largely by Kathy Nojima, including the series of entries on September 19, 1994, and she signed all of the reimbursement checks that day. Although none of the other September 19, 1994 "reimbursement" checks were supported by any documentation, the check for $1,009.26 check to Nojima was supported by miscellaneous receipts for long distance phone charges, a beauty salon, and restaurant receipts attached to a September 12, 1994, memo from Nojima supporting a reimbursement for the expenses.

April 1995 Kennedy Contributions

49. The Kennedy campaign incurred a $2 million debt during the 1994 election, and it began efforts to retire the debt immediately after the election. Nora Lum volunteered to help the campaign with that debt. The campaign had two separate committees and accounts set up at that point. First, individuals could contribute to the Retirement of Debt Fund, which would be a contribution to the Kennedy for Senate 1994 campaign. Second, the campaign began its campaign for re-election in 2000. On February 10, 1995, Nora Lum reached the maximum campaign contribution limit by giving $2,000 to the Kennedy for Senate 2000 Committee. In addition, she bought a $2,000 cashier's check in Gene Lum's name and contributed it to the Kennedy campaign on the same date as her own contribution.

50. During early 1995, the campaign began to work on a substantial fund-raising event that took place on April 4, 1995. There were fewer than 30 fund raisers present, and the Lums were the biggest fund raisers for this event. Nora Lum was seated at a table of seven with the President of the United States and Senator Kennedy.

51. A few days before the event, on March 31, 1995, the Lums purchased $10,000 in money orders at State Bank and Trust in Tulsa. The money orders were filled out with the names of various straw contributors and given to the Kennedy campaign. The contributions were divided between Kennedy's 1994 and 2000 campaigns, depending on which conduit was used. The money order contributions are set forth in the following table:

Name of Purported Contributor	Money Order Number	Amount	Campaign
Yon Lee	9669	$1,000	Kennedy for Senate
Yon Lee	9670	$1,000	Kennedy for Senate 2000
Helen Yee	9671	$1,000	Kennedy for Senate
Helen Yee	9672	$1,000	Kennedy for Senate 2000
Ronald Higa	9673	$1,000	Kennedy for Senate

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Name of Purported Contributor	Money Order Number	Amount	Campaign
Ronald Higa	9674	$1,000	Kennedy for Senate 2000
Larry Wong	9675	$1,000	Kennedy for Senate
Larry Wong	9676	$1,000	Kennedy for Senate 2000
Ted Kimura	9677	$1,000	Kennedy for Senate
Ted Kimura	9678	$1,000	Kennedy for Senate 2000

52. When the campaign received the money orders, they sent out their standard forms to the purported contributors asking them to certify that their money order contributions came from funds in their personal account. The Government's evidence indicates that the Lums and their straw contributors supplied false certifications to the campaign.

53. The contributions made by the Lums enabled them to attend fund raising events personally attended by Senator Edward Kennedy and other politicians, including the President of the United States. The Lums attended a fund-raising event at Senator Kennedy's home following their June 1994 illegal conduit contributions.

54. As noted in paragraph 38, the Lums also attended a more expensive fund-raiser at Senator Kennedy's home in September 1994. Ten days before the event, the Lums issued a series of eight checks from their corporation, Dynamic Energy Resources, Inc. to individuals associated with the company. The total amount of the checks was $20,009.26. Four days later, those individuals directly and indirectly contributed $20,000 to the Kennedy for Senate campaign. The Lums were credited by the Campaign with bringing in approximately $38,000 in connection with this event, and Nora Lum was seated with President Bill Clinton and Senator Edward Kennedy at the dinner table during the event.

July 1994 Price Campaign Contributions

55. Stuart Price left Dynamic Energy in June 1994 to run for Congress from the First Congressional District of Oklahoma. On July 19, 1994, he held a fund-raising event in Washington, D.C. Michael Brown was asked to be the Co-Chair for the event and to work toward raising $10,000. On July 18, 1994, Dynamic Energy checks 1587 and 1588 were issued to Michael Brown and Trisha Lum. Mr. Brown received $10,000 and Trisha Lum received $5,000. *(Described in paragraphs 25 and 26)*

56. Mr. Brown deposited his $10,000 Dynamic Energy check into his checking account on July 19, 1994. On July 21, 1994, Mr. Brown wrote a total of $8,000 in checks on his

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account that resulted in contributions to the Price campaign, from himself and three other conduits. The Lums understood that these Dynamic Energy funds would be used for this purpose.

57. Dynamic Energy check number 1588 in the amount of $5,000 was issued to Trisha Lum on July 18, 1994. Trisha Lum and individuals associated with her made a total of $5,000 of contributions to the Price campaign on July 19, 1994.

58. Trisha Lum withdrew $1,500 in cash from her credit union account on July 19, 1994. On that date, a total of $1,500 in American Express money orders were purchased in the name of Nickie Lum and Dimitri Seigel, Trisha's fiancé. The $1,500 in money orders were provided to the Price campaign on July 19, 1994, as contributions by Nickie Lum and Seigel. Also on July 19, 1994, Trisha Lum made a $500 contribution to the Price campaign in her own name.[3]

59. On July 19, 1994, Tong Soo Chung, Trisha Lum's co-worker at the Department of Commerce, made a $1,000 contribution to the Price campaign, for which Trisha reimbursed him in cash. On the same date, Gilbert Colon, Trisha Lum's supervisor, made a $2,000 contribution to the Price campaign. The Lums solicited these contributions and arranged for Chung and Colon to be reimbursed in cash for these contributions. Trisha Lum supplied the $3,000 in cash.

Additional Contributions and Expenditures

60. In addition to the above-described contributions, most of which are listed in the Factual Basis for Plea, there are a number of additional contributions that were funded by Nora Lum. Nickie Lum, another of the Lums' daughters, then a student at Princeton, made a $1,000 contribution to Kennedy on June 18, 1994. Her check was dated April 9, 1994, but before her check was actually submitted to the Kennedy campaign, on May 8, 1994, Nora Lum gave Nickie a $1,000 check. Trisha Lum also contributed $1,000 to the Kennedy campaign in June 1994, and it appears that Nora Lum provided her with at least a portion of the funds to do so.

61. In addition to her September 1994 Kennedy contribution, Kathy Nojima was reimbursed on several other occasions. In May 1994, she received a $1,600 check from Nora Lum, and deposited $1,500 into her State Bank account in Tulsa. Within a few days, she made a $1,000 contribution to the Price campaign.

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[3] The Lums have not acknowledged that the contributions were funded or reimbursed by the check from Dynamic Energy, and Dimitri Seigel's attorney has indicated that Seigel would claim that he bought his money orders with his own funds. As a result, these $2,000 in contributions are not included in the Factual Basis for Plea.

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62. In August 1994, Nora Lum also arranged for her daughter, Trisha, to make a $10,000 contribution to the Democratic Congressional Campaign Committee (DCCC). Nora Lum deposited personal and corporate funds into a joint account, and Trisha Lum made her $10,000 contribution from that account. *[Basis for guilty plea of Trisha Lum]*

63. There is also evidence of expenditures by Dynamic Energy in support of the Price campaign, none of which were reported to the FEC as contributions. The largest expenditures were incurred in connection with Stuart Price's campaign in Tulsa. In October 1994, the Lums arranged for Eric Hubbard, then a Dynamic Energy employee, to spend one or two weeks in Tulsa, most of which he spent working on Price's campaign. Dynamic Energy paid for Hubbard's travel and lodging, and he remained on the Dynamic Energy payroll. According to the Government, Hubbard said he spent time during the first three or four days working on Dynamic Energy natural gas matters, before he was instructed by Nora Lum to focus his attention on the Price campaign and their effort to "get out the vote" in the mostly African–American neighborhood of North Tulsa. Hubbard worked with Price himself during the remainder of his time in Tulsa, visiting churches and attempting to get votes in the African–American community.

64. The Lums also arranged for Roderick Ewell, an African–American minister from Southern California, to spend more than a month in Tulsa campaigning for Price. Ewell was not an employee or consultant for Dynamic Energy, other than his work on the Price campaign, and that is the only work he was asked to do by the Lums. After Nora Lum contacted Ewell and he agreed to come to Tulsa, she sent him a consulting agreement which did not mention any campaign work. Instead, the agreement stated that Ewell was to act as "a consultant on human resources to advise DERI on a community service project with Langston University." Ewell did not do any such work, and he was not asked to do so. Under his agreement with Dynamic Energy, Ewell was paid $1,500 at the outset, and $1,000 per week thereafter, for a total of $7,500. Dynamic Energy also paid Ewell's airfare and lodging costs, as well as for the cost of a rental car in Tulsa. Ewell worked exclusively on the Price campaign in Tulsa, and he attended numerous gatherings with Price.

Victim Impact

65. There are no specific or discernable victims associated with this offense.

Adjustment for Obstruction of Justice

66. There is no information at this time suggesting the defendant obstructed or attempted to obstruct justice in this case.

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Adjustment for Acceptance of Responsibility

67. The defendant acknowledged his criminal conduct to the Court and, under the terms of a written plea agreement, pled guilty to a felony one-count Information. Lum has also agreed to meet with Government attorneys and investigators to undergo a full debriefing.

68. The defendants, through their counsel, provided a signed statement that reads...

> We have entered a plea of guilty to conspiracy, and we acknowledge engaging in the unlawful conduct described in the factual basis for our plea. We regret our actions.
>
> We became active in politics because we believed that the Asian-Americans were under represented in the political and electoral process. Our motives have always been to encourage more Asian-Americans to participate in that process and to promote the candidacy of person who be believed were sympathetic to causes affecting Asian-Americans.
>
> In following these objectives, however, we crossed the line and engaged in illegal conduct. We acknowledge that we evaded the limits on individual contributions to the Kennedy and Price campaigns by enlisting various people to allow us to use their names for contribution to those campaigns, and by making donations to those campaigns in the names of people who were unaware we were doing so. We also admit to using corporate funds improperly to reimburse people for political contributions. In the course of this conduct, we knew that false information would be provided to the Federal Election Commission.
>
> We are ashamed of what we did and we accept full responsibility for our actions. We are very sorry for the burdens we have caused to others as a result or our conduct and we will do everything we can to right the wrongs we have committed.

69. During meetings and conversations with the probation office, the Lums were cooperative and seemingly forthright in providing information regarding their personal backgrounds and their business activities. They also openly discussed the instant offense with respect to the illegal activities outlined in the Factual Proffer.

70. Although she conceded that her contributions provided her access to high ranking elected officials, Mrs. Lum asserted that her only goal was to "push for more Asian-Americans in the Executive branch." "Kennedy, she said, "was supportive of our efforts. [The contributions] were not for our gain or attention."

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71. Both Mr. and Mrs. Lum said they are deeply sorry for involving their children in the instant offense. "We always stressed hard work and honesty," Mrs. Lum said, "only to associate them with something illegal."

Offense Level Computation

72. We have used the 1995 edition of the *Guidelines Manual* to apply the following guidelines. Under *Appendix A, Statutory Index*, several potential guidelines are listed for a violation of 18 U.S.C. § 371. Of those listed, §2C1.7, *Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions*, appears to be the guideline most analogous to the offense conduct.

73. **Base Offense Level:** U.S.S.G. § 2C1.7(a) sets a base offense level of 10. 10

74. **Specific Offense Characteristics:** None 0

75. **Victim-Related Adjustment:** None 0

76. **Adjustment for Role in the Offense:** The offense conduct occurred from on or about March 1994 through 1995. During this period, the Lums used several methods and many individuals to funnel contributions to the Kennedy and Price campaigns. In addition to the defendants, the offense involved other criminally responsible participants. These included Trisha Lum, Michael Brown, and Kathy Nojima. In doing so, the Lums established controls and procedures to keep track of conduit contributions to ensure that these conduits did not exceed FEC limits to avoid scrutiny. Under §3B1.1(a), the defendant was an organizer of a criminal activity involving five or more criminally responsible participants or was otherwise extensive. +4

77. **Adjusted Offense Level (Subtotal):** 14

78. **Adjustment for Acceptance of Responsibility:** As detailed earlier in the report, the defendant has clearly demonstrated an acceptance of responsibility for the criminal conduct. Under U.S.S.G. § 3E1.1(a), the offense level is reduced by 2 levels. -2

79. **Chapter Four Enhancements:** None 0

80. **Total Offense Level:** 12

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PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

81. The defendant has no known record of juvenile adjudications.

Adult Criminal Conviction(s)

82. Federal, as well as state and local record checks in Hawaii, California, and Oklahoma did not uncover any record of arrests or convictions.

Criminal History Computation

83. The total criminal history score is zero, and the criminal history category is I. *See* Sentencing Table (Chapter 5 Part A).

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

84. The defendant was born in Honolulu, Hawaii on [redacted] She is the third oldest of four children born to her parents, Kikuko and Paul Nojima. Kikuko died at the age of 70 in 1985. Paul Nojima died in 1963. Her oldest sibling is Stanley Nojima, age 56, who is retired and lives at [redacted] Telephone [redacted] Another brother, 50 year old Glenn Nojima, is a U.S. Postal employee, and lives at [redacted] Her sister, Kathy Nojima, age 42, lives in the defendant's Tulsa, Oklahoma home.

85. Kathy Nojima, 13 years younger than Nora, said that the defendant cared for her from an early age. She said that Nora carried her "care giving ways" ways into adulthood, often generously extending herself to friends and their families to her own detriment.

86. Kathy Nojima told us that she is staying in Oklahoma to "finish Dynamic's business." She said that Dynamic Energy still has one processing unit that is for sale and, under Oklahoma law, it must be monitored while it is active. She said that she is also completing the final Chapter 11 paperwork for the company. Once completed, she said she too will move to Long Beach to live with the defendants and the rest of the family.

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87. The defendant was married once before her marriage to Gene Lum: she was married to Samuel Y. Lee, now age 56, briefly until their divorce in 1967. She said that they did not have any children together.

88. She married Gene Lum in Fremont, California on [redacted] and three daughters were born to their marriage. The oldest daughter, Trisha Lum Siegel, is 28 years old and lives with the defendants at [redacted] Trisha graduated in 1993 from the University of San Francisco with a Bachelor of Arts degree. She married Dimitri Siegel on July 5, 1997. She now runs a business that is owned by the Lum family, L.A. Sound International. The company imports car stereo equipment from Korean and Chinese manufacturers for wholesale in the U.S. The family is also acquiring a California business license for Ki International, a company they are establishing to market a CD-Rom changer for computers. Mr. and Mrs. Lum said this endeavor has proven to be fairly unsuccessful.

89. The Lum's second daughter, Maxine R. Lum Mauricio, is 26 years old and lives at [redacted] Telephone [redacted] Ms. Mauricio earned an undergraduate degree from Dartmouth and a law degree in 1996 from Harvard. She is now an associate with the Boston law firm of Ropes & Gray. Telephone [redacted]

90. The Lum's youngest daughter is 21-year old Nickie M. Lum. She is a May 1997 graduate of Princeton University and is now employed with the family business in Los Angeles. Nickie also lives with her parents in Long Beach. She is working to establish a music promotion business in Los Angeles called Tiger Records.

91. The defendants reared their family in Honolulu in what all of them described as an upper middle class lifestyle. They reported that there was "an excellent home atmosphere." It appears that the Lum family is close and supportive of one another.

Lum History in Relation to the Instant Offense

92. During 1994 and 1995, Nora and Gene Lum were residents of Tulsa, Oklahoma, although they also had residences in Washington, D.C., and Honolulu, Hawaii. Before moving to Tulsa, they had been active in politics in Hawaii for many years, including fund-raising activity for former Governor John Waihee. In 1992, the couple moved to the Los Angeles area to raise money and organize the Asian Pacific vote for the Clinton/Gore ticket. The Lums helped establish the Asian Pacific Advisory Council (APAC) and a related entity, APAC-Vote, which were believed by many to be affiliates of the Democratic National Committee (DNC) that furthered the political interests of Asian Pacific Americans and

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raised funds for Bill Clinton.[4] The Lums had also personally raised substantial funds and made substantial contributions to the DNC. Nora and Gene Lum met Michael Brown, the son of former Secretary of Commerce, Ron Brown, during the 1988 Michael Dukakis campaign. The Lums became acquainted with Ron Brown while he was chairman of the DNC.

93. In 1993, the Lums moved to Tulsa, Oklahoma, where Mrs. Lum formed Dynamic Energy Resources, Inc. (a Delaware corporation) to purchase the assets of a then struggling natural gas company, Gage, Inc., for approximately $9 million. The assets consisted largely of a section of pipeline, gas contracts and a processing plant near Tulsa, Oklahoma. At the time, Oklahoma Natural Gas (ONG) was the only Gage customer, and it had begun reducing its purchases from Gage, resulting in civil suits filed by Gage against ONG. As part of the sale of Gage to the Lums, ONG offered them a contract to purchase natural gas, contingent upon the withdrawal of the lawsuit filed by Gage. After taking over Gage, Dynamic Energy received a substantial contract from ONG, grossing Dynamic Energy $18 million.

94. Nora Lum was Chairman of the Board and the majority shareholder of Dynamic Energy, but Gene Lum had no financial interest in the company, but was listed as a Director. The Lums named several other family members, friends, and associates to the Board of Directors, and provided them with a small number of shares in the company without cost. From the ONG contracts, the Lums retained $5.2 million and Stuart Price received $2.5 million. Additional amounts were distributed to other share holders, including Michael Brown, who had been given a 5% stake in the company when the Lums placed him on the Board of Dynamic Energy.

95. The Lums had enlisted the services of Stuart Price, an Oklahoma businessman, to put the natural gas deal with Gage together, and then to run the company since the Lums had no experience in the gas business. The Price family in turn held a substantial interest in Dynamic Energy.

96. Price, a former Oklahoma finance chairman for the Clinton 1992 Presidential Campaign, left Dynamic Energy to run for Congress from Tulsa in June 1994. After Price lost the 1994 election to Steve Largent, Linda Price, Stuart Price's wife, filed suit in Oklahoma State Court (Tulsa, CJ-95-1948). Price alleged Nora Lum had "taken advantage of their power and control over the corporation to systematically loot its assets for their personal benefit and for the benefit of certain of their friends and relatives." Specifically, Linda

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[4] According to the Sacramento Office of the California Secretary of State, APAC-Vote, Inc. had offices at 1000 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. The registered agent for APAC-Vote, Inc. was David C. Tseng. APAC-Vote, Inc. was registered as a domestic non-profit mutual benefit corporation on June 8, 1993. APAC's license to do business in California is suspended.

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Price accused the Lums of using Dynamic Energy to gain political influence and to funnel campaign contributions. The lawsuit, which was filed in May 1995, continued until February 9, 1996, when it was dismissed after the Lums settled with Stuart Price for, according to the Lums, approximately $150,000 in cash and Ramco stock valued at $450,000.

97. Dynamic Energy filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Northern District of Oklahoma in September 1995. In case number 95-03029-C, Dynamic Energy also filed a Complaint for Turnover of Property against the law firm of Riggs, Abney, Neal, Turpen, Orbinson and Lewis (RANTOL). Dynamic Energy sought to regain property, or stocks, that Price had taken from the corporation and delivered to RANTOL for safekeeping. The Chapter 11 filing also included a complaint against Enogex Services Corporation, a subsidiary of ONG, involving a Dynamic Energy debt. Dynamic Energy submitted a plan of Reorganization in June 1996, and the case remains open with outstanding debts of $1.6 million, although Mr. Lum advised us that all debts, except those to Nora Lum, have been paid. The company still owns a Honolulu condominium and a Lake Manassas, Virginia country club membership.

98. Dynamic Energy maintains a corporate office at [redacted] Tulsa, Oklahoma [redacted] Telephone [redacted] Our officers in Tulsa visited the office several times but never found anyone present in the office suite. Kathy Nojima told us that the office was vacant at the time because she was visiting the defendants in Los Angeles.

Physical Condition

99. Mrs. Lum is 5 feet 3 inches tall, weighs approximately 145 pounds, and she has black hair and brown eyes. The defendant said she is in "general good health," although she noted that she incurred a serious injury in 1982. She explained that she was struck on the head by a light fixture that fell from an office ceiling. Although not hospitalized at first, she later experienced several blackouts, seizures and severe headaches. Mr. Lum explained that her blackouts, which she typically does not remember, are as brief as five seconds to as long as one minute. Doctors prescribed several medications, including Dilantin, Tofinal, and Valium for the condition. She said her last blackout was in December 1996.

100. Mrs. Lum also reported that she suffers from severe allergies to seafood. She noted that she was hospitalized for one week in Honolulu's Straub Hospital in 1994 after having a severe allergic reaction to seafood meal. Mrs. Lum said she had a very high fever, chills, and an extremely low white blood cell count. Mr. Lum said that hospital doctors told him she was close to death when she arrived at the hospital.

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Mental and Emotional Health

101. Although she has no history of mental or emotional health illnesses, Mrs. Lum was examined and treated for mild depression following her 1982 head injury.

Substance Abuse

102. The defendant has no history of drug use or alcohol abuse.

Education

103. Nora Lum graduated from Farmington High School, in Honolulu, in 1960. She later attended the University of Hawaii, but only took a few classes. Her counsel indicated that she withdrew from college because of her need to work to help support her family. The university does not have any record of a degree for the defendant.

Employment Record

104. From 1971 to 1977, Nora Lum owned and operated a souvenir and tee shirt shop in Honolulu, and then from 1977 to 1980, she and her husband owned and operated a golf shop. After closing down the golf shop, Mrs. Lum said she began working as a consultant to developers helping them work comply with Hawaii's state and local regulations and win approval for development projects. She cited the Hawaii Riviera Project as one she worked on from 1988 to 1992. The owner of this 20,000 acre project on the Island of Hawaii, Charles Chidiac, lost financing and was unable to proceed with development plans.

105. In 1990, Mrs. Lum worked as a consultant to two corporations that owned a 300–acre parcel of land on Kona, Hawaii that was intended for development as a golf course. The defendant, along with other business associates, have a 50% interest in this project called the Akhari Joint Venture

106. As described earlier, Mrs. Lum formed Dynamic Energy in 1992 to purchase the assets of a Tulsa, Oklahoma natural gas company. Mrs. Lum said the company is in the process of shutting down. She reported that she nor her husband no longer receive any income from Dynamic Energy.

107. At present, Mrs. Lum said she actively manages, with other family members, L.A. sound International and Ki International in California. She also said she is working on speculative deals to import Russian vodka and market it to American women. She is also reportedly working on a potential contract to develop in oil refinery in that country. On the advice of her attorney, Mrs. Lum declined to provide details concerning her income.

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Financial Condition: Ability To Pay

108. The Lums, acting on the advice of their counsel, respectfully declined to provide the U.S. Probation Office with access to their bank records. They also declined to complete the Personal Financial Statement that details all personal and business income, assets, and debts. The defendants also respectfully declined to execute releases granting this office access to credit reports or other financial records.

109. Counsel noted that paragraph 10 of the *Plea Agreement* reads...

> [D]efendants understand that the United States is conducting and/or will conduct an investigation of possible offenses arising from tax-returns filed or required to be filed by Nora Lum, Gene Lum, and Dynamic Energy Resources, Inc. ("DERI") and/or any employee, shareholder or directory of DERI (hereinafter "tax related offenses"). Nothing in this agreement shall prohibit the United States from prosecuting the defendants for any tax related offenses, as described herein... .

110. Counsel also noted that paragraph 5 of the *Plea Agreement* provides, in part, that "the defendants will not be required to waive their Fifth Amendment privileges against self-incrimination concerning the matters still prosecutable under the terms of paragraph 10 herein in order to satisfy their obligation to cooperate under this agreement."

111. Although the Lums have declined to provide any financial information to the Court at this point, they concede that they "can afford to pay the maximum guideline fine that could be imposed under any guideline range that would likely apply in this case."

112. Real property records in California, Hawaii, Oklahoma, and the District of Columbia reflect that the Lums, either jointly or individually own the following properties:

a) [redacted]
Washington, D.C. [redacted]
Tax assessed value [redacted]

b) [redacted]
Tulsa, Oklahoma [redacted]
Tax assessed value [redacted]

c) [redacted]
Honolulu, Hawaii [redacted]
Estimated value [redacted]

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d) [redacted]
Honolulu, Hawaii [redacted]
Value unknown

e) [redacted]
Waianne, Hawaii [redacted]
Tax assessed value [redacted]

113. As noted in paragraph 105, Mrs. Lum, with others, owns 50% interest in the Akahi Joint Venture, a corporation that owns 300 acres of land in Kona, Hawaii. The Lums said that the property is listed for sale at $8 million. The listed brokers are Osamu Murata and May Murakami. Telephone [redacted] When we called Mr. Murata to ask about the property, he asked how we heard about it. After explaining our reason for calling, he said he didn't know what we were talking about—but proceeded to tell us the land was no longer for sale—before abruptly hanging up the phone. He did not respond to additional phone calls, and we have been unable to locate public records concerning the land.

114. According to court records in the Northern District of Oklahoma, a civil suit (96CV0118B) was filed by L.A. Sound International and Michael Brown against Richard Bertsch and the Metrosound Corporation of Los Angeles, California for trademark infringement, illegal transfer of equity stocks, and over a non-competition agreement.

115. Court records show that the Lums—through a holding company called RMC International, a Nevada Corporation owned and directed by Nora Lum—purchased the company sometime between January and April 1995. In doing so, the Lums loaned the company $1 million to finance operations. Richard Bertsch was president of the company after the purchase.

116. In January 1996, the Board of Directors, consisting of Nora, Gene and Trisha Lum, fired Bertsch as President of the company and replaced him with Gene Lum. The suit, dismissed with prejudice on December 31, 1996, indicated that Bertsch engaged in disruptive practices and attempted to use the L.A. Sound International trademark on similar electronic products that were to be sold in the U.S. The Lums indicated that their son-in-law, Dimitri Siegel is now President of L.A. Sound International. We could not locate any information concerning the value of a L.A. Sound International or its holding company, RMC.

117. We did not locate any public record of debts or liens filed against Mrs. Lum, other than those of Dynamic Energy.

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PART D. SENTENCING OPTIONS

118. **Statutory Provisions:** A term of not more than 5 years imprisonment is authorized for this Class D felony. 18 U.S.C. § 371

119. **Guideline Provisions:** Based on a total offense level of 12 and a criminal history category of I, the guideline range of imprisonment is from 10 to 16 months.

Impact of Plea Agreement

120. The parties agreed that the Sentencing Reform Act of 1984 is applicable in this case. The Government agreed that, should the defendants continue to "clearly demonstrate acceptance of responsibility for the instant offense," they will recommend that they each receive the applicable reduction for acceptance of responsibility under U.S.S.G. § 3E1.1.

121. The Government also agreed that it will not seek an upward departure so long as the total offense level calculated by the Court at sentencing, including any reduction for acceptance of responsibility, is 14 or greater. If the total offense level is 13 or less, the Government retained the right to seek an upward departure to level 14. The defendants retained the right to oppose any upward departure request without the Government seeking to withdraw its support for an adjustment for acceptance of responsibility.

Supervised Release

122. **Statutory Provisions:** A supervised release term of no more than 3 years is authorized for Class D felony convictions. 18 U.S.C. § 3583(b)(2)

123. **Guideline Provisions:** If a term of imprisonment of one year or more is imposed, the Court shall also order a term of supervised release to follow imprisonment. U.S.S.G. § 5D1.1(a). The term for a Class D felony shall be at least 2 years but no more than 3 years. U.S.S.G. § 5D1.2(a)(2)

124. Under U.S.S.G. § 5C1.1(d)(2), the Court may satisfy the minimum of the guideline range by 1) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention on a 1:1 ratio, provided that at least one-half (5 months) of the minimum term is satisfied by imprisonment.

Probation

125. **Statutory Provisions:** The Court may impose a probation term that, if imposed, shall be at least 1 year but no more than 5 years. 18 U.S.C. § 3561(c)(1)

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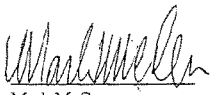
135. The Court may also consider whether the guideline, §2C1.7, adequately considers the monetary value of the illegal campaign contributions. Since this case does not involve a loss, this guideline does not consider the amount of the illegal campaign contributions involved in the instant offense. For example, a defendant who illegally contributed $3,000 to a federal campaign would receive a sentence similar to a defendant who contributed much more. If the Court believed it is necessary to quantify the contributions under the guidelines to determine a total offense level, it could look to the loss table of U.S.S.G. § 2F1.1., which is cross referenced in §2C1.7(b)(1)(A).

136. Under U.S.S.G. § 2F1.1(b)(1)(F), for example, the Court could determine that if the contribution amount was more than $40,000 but less than $70,000, there could be an offense level increase based on the amount contained in that guideline. In this case, that would equate to a five-level increase. If applied to the instant offense, the Adjusted Offense Level would be 19, and the total offense level would be 16 (because the Adjusted Offense Level would be 16 or more, the defendant would qualify for a 3-level Acceptance of Responsibility adjustment rather than the current 2 levels).

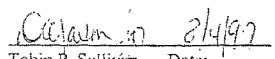
137. A total offense level of 16 and a criminal history category of I results in a guideline imprisonment range of 21 to 27 months and a fine range of $5,000 to $50,000.

Respectfully submitted,

RICHARD A. HOUCK, JR.
Chief U.S. Probation Officer

by: 
Mark McCroson
U. S. Probation Officer

Reviewed:


Tobin P. Sullivan Date:
Supervising U.S. Probation Officer

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ADDENDUM TO THE PRESENTENCE REPORT

Disclosure/Objection Chronology

The presentence report was disclosed to counsel on July 16, 1997. Counsel for the Government submitted the Receipt and Acknowledgment Form on July 25, 1997, and counsel for the defendant submitted the form on July 30, 1997.

OBJECTIONS

By The Government

The Government noted no material, factual inaccuracies and no objections.

By the Defendant

Counsel for the defendant noted several non–material factual inaccuracies and "clarifications". The final edition of the report was modified—without impacting the guidelines— to correct these inaccuracies.

With respect to the Part E. *Factors That May Warrant Departure*, counsel noted that defendant objects to any application by the Government for upward departure from the total offense guideline of 12 on the ground that any such departure is unwarranted by the offense and inconsistent with the applicable guidelines.

Respectfully submitted,

RICHARD A. HOUCK, JR.
Chief U.S. Probation Officer

by: Mark McCroson
U.S. Probation Officer

Reviewed:

8/4/97
Tobin P. Sullivan Date:
Supervising U.S. Probation Officer

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.:
	:	
	:	VIOLATION:
v.	:	18 U.S.C. Section 371
	:	(Conspiracy)
	:	
NORA T. LUM	:	
GENE K.H. LUM	:	

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America and the defendants, Nora T. Lum and Gene K.H. Lum, agree as follows:

1. Defendants Nora Lum and Gene Lum are entering this agreement and are pleading guilty freely and voluntarily without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.

2. Defendants Nora Lum and Gene Lum knowingly, voluntarily and truthfully admit the facts set forth in the attached Factual Basis for Plea.

3. The defendants shall enter a plea of guilty to the One Count Information, a copy of which is attached hereto. The defendants admit that they are guilty of the crime charged in the Information, that is, conspiracy to defraud the United States and to cause the submission of false statements in a matter within the jurisdiction of the Federal Election Commission, in violation of 18 U.S.C. § 371.

4. The defendants understand the nature of the offense to which they are pleading guilty, and the elements thereof, including

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the penalties provided by law. The charge carries a maximum sentence of imprisonment for a term not to exceed five (5) years, a $250,000 fine, or both, with a mandatory special assessment of $100. The defendants understand that the Court may impose a term of Supervised Release to follow any incarceration, in accordance with Title 18, United States Code, Section 3583, and that, in this case, the authorized term of supervised release is not more than three years.

5. The defendants agree to cooperate fully with the United States and to provide truthful and complete information to the Public Integrity Section and to any law enforcement agency working with the Public Integrity Section, said cooperation to include but not be limited to, being readily available to be interviewed, testifying before the grand jury and at any trials, and providing documents and records in their possession related to any interview or testimony. The defendants will not be required to waive their Fifth Amendment privilege against self-incrimination concerning the matters still prosecutable under the terms of paragraph 10 herein in order to satisfy their obligation to cooperate under this agreement.

6. It is further understood by the parties that the defendants must at all times provide complete and truthful information and testimony. Should it be determined that the defendants have intentionally given materially false, incomplete, or misleading testimony or information, or have intentionally omitted any material fact, or have intentionally impeded the United

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States in its investigations, this agreement shall be voidable at the option of the United States, and the defendants shall be subject to prosecution for perjury, false statements, and obstruction of justice.

7. Should any further prosecution be brought against the defendants by the United States, the United States will not offer in evidence against the defendants any statements made by them pursuant to their cooperation under this agreement, except in a prosecution for false statements, obstruction of justice or perjury. Nevertheless, the United States can use information derived from statements made by the defendants during the course of their cooperation under this agreement directly or indirectly for the purpose of obtaining leads to other evidence, which evidence may be used by the United States in any prosecution of the defendants.

8. The defendants further agree that if they should fail to fulfill completely each of their obligations under this agreement, the United States' obligations under this agreement will be void, and the United States will be free to prosecute the defendants for any offense that could have been prosecuted as of the date of this agreement. In any such prosecution, the United States may use any evidence derived from statements made by the defendants pursuant to this agreement.

9. If the Court accepts the defendants' pleas of guilty to the Information, and defendants Nora Lum and Gene Lum fulfill each of the terms and conditions of this agreement, the United States

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agrees that it will not further prosecute the defendants for: (a) conduct now known to the Public Integrity Section or to law enforcement agents working with the Public Integrity Section; or (b) offenses relating to campaign financing laws committed before the date hereof.

10. Notwithstanding paragraph 9, the defendants understand that the United States is conducting and/or will conduct an investigation of possible offenses arising from tax-returns filed or required to be filed by Nora Lum, Gene Lum, Dynamic Energy Resources, Inc. ("DERI") and/or any employee, shareholder or director of DERI (hereinafter "tax-related offenses"). Nothing in this agreement shall prohibit the United States from prosecuting the defendants for any tax-related offenses, as defined herein, with the exception of tax-related offenses arising from campaign contributions made during the period from June 30, 1993, through December 31, 1995, that are now known to the Public Integrity Section or to law enforcement agents working with the Public Integrity Section. Moreover, nothing in this agreement shall prohibit the United States from prosecuting the defendants for any offenses arising out of or related to wire transfers of funds by DERI, the defendants, or others acting on their behalf in December 1994 or January 1995.

11. The Public Integrity Section will bring this plea agreement and the full extent of defendants' cooperation to the attention of other prosecuting offices if requested.

12. The defendants understand that the United States does not

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make any promises or representations regarding any proceedings that may be instituted by the Internal Revenue Service or the Federal Election Commission.

13. The defendants understand and acknowledge that the offenses with which they will be charged are subject to the provisions and guidelines of the "Sentencing Reform Act of 1984," 18 U.S.C. §§ 3661, et seq.; 28 U.S.C. § 994(a).

14. The United States cannot and does not make any promise or representation as to what sentence the defendants will receive or what fines or restitution, if any, they may be ordered to pay. The defendants understand that the sentence and the sentencing guidelines applicable to this case will be determined solely by the Court, with the assistance of the United States Probation office, and that they will not be permitted to withdraw their pleas regardless of the sentence calculated by the United States Probation office or imposed by the Court.

15. Defendants Nora Lum and Gene Lum understand and acknowledge that they may receive any sentence within the statutory maximums for the offense of conviction.

16. Should defendants Nora Lum and Gene Lum clearly demonstrate acceptance of responsibility for the instant offense, the United States will recommend that they each receive the applicable reduction for acceptance of responsibility under §3E1.1 of the Sentencing Guidelines.

17. The United States agrees that it will not seek an upward departure so long as the total offense level calculated by the

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Court at sentencing, including the applicable reduction for acceptance of responsibility, is 14 or greater. If the total offense level calculated by the Court, including the applicable reduction for acceptance of responsibility, is 13 or less, the United States reserves the right to seek an upward departure to level 14. The defendants reserve the right to oppose such a request for an upward departure, and the United States will not withhold or withdraw any recommendation regarding acceptance of responsibility, as described in paragraph 16, based upon the defendants' opposition to a request for an upward departure.

18. The defendants understand that the recommendations and agreements contained in paragraphs 16 and 17 are not binding on the sentencing judge or the Probation Office, and that they will not be entitled to withdraw their pleas in the event that either the sentencing judge or the Probation Office does not accept or follow these recommendations.

19. If the United States determines in its sole discretion that the defendants have provided substantial assistance to authorities in the investigation or prosecution of another person who has committed an offense, the United States agrees that it will file with the Court a motion for a downward departure, pursuant to U.S.S.G. § 5K1.1 and/or Fed. R. Crim. P. 35.

20. Defendants Nora Lum and Gene Lum understand that the Court may impose a fine, restitution, costs of incarceration, and costs of supervision.

21. The United States reserves the right to allocute in all

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respects as to the nature and seriousness of the offense, but will make no recommendation as to the sentence to be imposed within the guideline range determined by the Court. The attorneys for the United States will inform the sentencing Judge and the Probation Office of (1) this agreement; (2) the nature and extent of defendants' activities with respect to this case; and (3) all other information in its possession relevant to sentencing.

22. Defendants Nora Lum and Gene Lum waive the right to appeal their convictions on any ground. The defendants also waive the right to appeal their sentences unless: (a) the Court increases the defendants' offense level pursuant to any Specific Offense Characteristic set forth in Chapter Two of the United States Sentencing Guidelines; (b) the Court departs upward from the applicable sentencing guideline range; or (c) the Court departs from the applicable statutory maximum sentence.

23. Defendants Nora Lum and Gene Lum agree that if the Court does not accept their pleas of guilty to the Information, this agreement shall be null and void.

24. This agreement constitutes the entire agreement between the United States and defendants Nora Lum and Gene Lum. No other promises, agreements, or representations exist or have been made to defendants Nora Lum and Gene Lum or their attorneys by the

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Department of Justice in connection with this case. This agreement may be amended only by a writing signed by all parties.

Dated: May 16, 1997.

FOR THE UNITED STATES

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JONATHAN BIRAN
Trial Attorneys
Public Integrity Section
Criminal Division
U.S. Department of Justice
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Defendant

GENE K.H. LUM
Defendant

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Counsel for the Defendants

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.:
	:	
	:	VIOLATION:
v.	:	18 U.S.C. Section 371
	:	(Conspiracy)
	:	
NORA T. LUM	:	
GENE K.H. LUM	:	

FACTUAL BASIS FOR PLEA

1. At all times relevant to the Information and Factual Basis for Plea, defendants NORA T. LUM and GENE K.H. LUM were aware that the following actions were prohibited:

(a) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's primary election;

(b) for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's general election;

(c) for any person to make a contribution in the name of another person to the campaign of a candidate for federal office; and

(d) for any corporation to make a contribution to the campaign of a candidate for federal office.

2. At all times relevant to the Information and Factual Basis for Plea, defendants NORA T. LUM and GENE K.H. LUM were aware that the campaign of a candidate for federal office was required by federal law to provide information regarding contributors and contributions to the Federal Election Commission (FEC).

3. On May 18, 1994, defendants NORA T. LUM and GENE K.H. LUM purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and caused those money orders to be submitted to the Kennedy for Senate campaign as contributions in the names of two straw contributors on May 25, 1994 and June 20, 1994.

4. On May 19, 1994, defendants NORA T. LUM and GENE K.H. LUM purchased and/or caused the purchase of two United States Postal money orders in the total amount of $1,000, and contributed those money orders to the Kennedy for Senate campaign as a contribution in the name of a straw contributor on June 20, 1994.

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5. On May 19, 1994, defendants NORA T. LUM and GENE K.H. LUM provided $2,000 to a conduit contributor, and caused the conduit and another person to use those funds to make contributions to the Kennedy for Senate campaign in their own names in the total amount of $2,000 on May 25, 1994.

6. On or about September 19, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy Resources, Inc. ("Dynamic Energy") check number 1783 in the amount of $2,000 to be issued to an employee of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate campaign. Defendants caused the employee to make a $2,000 contribution to the Kennedy for Senate campaign using those funds on September 23, 1994.

7. On September 19, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy check number 1781 in the amount of $3,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate campaign. Defendants caused the shareholder/director to contribute $3,000 to the Kennedy for Senate campaign in his own name and the name of his spouse on September 23, 1994.

8. On September 19, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy check number 1785 to be issued to an employee of Dynamic Energy, in the amount of $3,000. The check contained the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate campaign. Defendants caused the employee to contribute $3,000 to the Kennedy for Senate campaign in his own name and the name of his spouse on September 23, 1994.

9. On September 19, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy check number 1787 in the amount of $2,000 to be issued to a shareholder/director of Dynamic Energy, containing the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for Senate campaign. Defendants caused the daughter of the shareholder/director to make a $2,000 contribution to the Kennedy for Senate campaign in her own name on September 23, 1994.

10. On or about September 19, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy check number 1786 in the amount of $5,000 to be issued to a shareholder, director, and officer of Dynamic Energy, with the notation "reimbursement." Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Kennedy for

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LUM provided a conduit contributor with $2,000 and caused the conduit to make $2,000 in contributions to the Kennedy for Senate Committee that were recorded in the conduit's own name and in the name of the conduit's spouse. Defendants provided the conduit with the funds in the form of two checks: the first was a check on NORA T. LUM'S personal account in the amount of $750, and the second was Dynamic Energy check number 2444 in the amount of $1,250.

18. Shortly before July 18, 1994, defendants NORA T. LUM and GENE K.H. LUM became aware that a shareholder, director, and officer of Dynamic Energy had been asked to raise $10,000 in contributions for the Stuart Price for Congress campaign. On July 18, 1994, defendants NORA T. LUM and GENE K.H. LUM caused Dynamic Energy check number 1587 to be issued to this shareholder, director, and officer of Dynamic Energy in the amount of $10,000. Defendants understood and intended that this check would provide funding or reimbursement for contributions to the Stuart Price for Congress campaign. On July 25, 1994, defendants and the shareholder, director, and officer caused $8,000 in contributions to be made to the Stuart Price for Congress campaign in his own name and the names of three other conduit contributors.

19. In or about July 1994, defendant NORA T. LUM asked two conduit contributors to make contributions to the Stuart Price for Congress campaign. On or about July 19, 1994, defendants caused these two conduit contributors to submit $3,000 in contributions to the Stuart Price for Congress campaign. Defendants caused another person to reimburse these conduit contributors with $3,000 in cash.

20. Defendants NORA T. LUM and GENE K.H. LUM caused the Kennedy for Senate, Kennedy for Senate 2000, and Stuart Price for Congress campaigns to file reports with the FEC which falsely

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reported the names of the conduit and/or straw contributors described above, and concealed the actual source of the contributions.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.:
	:	
	:	VIOLATION:
v.	:	18 U.S.C. Section 371
	:	(Conspiracy)
	:	
NORA T. LUM	:	
GENE K.H. LUM	:	

INFORMATION

The United States charges:

COUNT ONE

CONSPIRACY

A. INTRODUCTION

At all times material to this Information:

1. Dynamic Energy Resources, Inc. ("Dynamic Energy") was a corporation formed under the laws of the State of Delaware, with offices located in Tulsa, Oklahoma. In or about September 1994, Dynamic Energy opened an office in the District of Columbia.

2. Defendant NORA T. LUM was a Director, the majority shareholder, and Chief Executive Officer of Dynamic Energy.

3. Defendant GENE K.H. LUM was a Director of Dynamic Energy, and was the husband of defendant NORA T. LUM.

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The Federal Election Campaign Act

4. Under the provisions of the Federal Election Campaign Act ("FECA"):

(a) it was unlawful for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's primary election;

(b) it was unlawful for any person to contribute more than $1,000 to the campaign of a candidate for federal office for the candidate's general election;

(c) it was unlawful for any person to make a contribution in the name of another person to the campaign of a candidate for federal office; and

(d) it was unlawful for any corporation to make a contribution to the campaign of a candidate for federal office.

5. The Federal Election Commission ("FEC") was the agency of the United States that was responsible for administering and enforcing the FECA. The FEC was also responsible for providing accurate information to the public about the amounts and sources of campaign contributions.

6. Under the provisions of the FECA, the Treasurer of the principal campaign committee supporting a candidate for federal

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office was required to file periodic reports with the FEC listing the contributions received by the campaign. In each report, the Treasurer was required to state the following for all contributions that were made by a person who contributed more than $200 during the calendar year:

(a) the identity of the contributor;

(b) the date of the contribution; and

(c) the amount of the contribution.

The Kennedy Campaigns

7. During the period from April 1994 through November 8, 1994, United States Senator Edward M. Kennedy was seeking reelection as a United States Senator from Massachusetts. The Kennedy for Senate Committee was the principal campaign committee that supported Senator Kennedy's candidacy.

8. Following Senator Kennedy's re-election to the United States Senate on November 8, 1994, the Kennedy for Senate 2000 Committee was the principal campaign committee that supported Senator Kennedy's candidacy for reelection to the United States Senate in the year 2000.

The Stuart Price Campaign

9. During the period from in or about June 1994 through November 8, 1994, William Stuart Price was a candidate for the United States House of Representatives from the First Congressional District of Oklahoma. The Stuart Price for Congress Committee was

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the principal campaign committee that supported Stuart Price's candidacy.

B. THE CONSPIRACY

10. Beginning in or about May 1994, and continuing through in or about April 1995, in the District of Columbia and elsewhere, the defendants NORA T. LUM and GENE K.H. LUM and others combined, conspired, and agreed --

(1) to defraud the United States by impairing, impeding, and defeating the lawful functions and duties of the FEC; and

(2) to knowingly and willfully cause the submission of material false statements to the FEC, in violation of Title 18, United States Code, Section 1001.

C. MANNER AND MEANS OF THE CONSPIRACY

11. It was a part of the conspiracy that defendants NORA T. LUM and GENE K.H. LUM used funds from Dynamic Energy and NORA T. LUM to make substantial unlawful campaign contributions, totalling approximately $50,000, and concealed the true source of the contributions from the FEC and the public by making the contributions in the names of other individuals, who are known as "conduits" or "straw contributors."

12. It was a part of the conspiracy that defendants NORA T. LUM and GENE K.H. LUM made unlawful contributions by: (a) providing conduits with the funds to make contributions in their own names; (b) reimbursing conduits for their contributions; and (c) by making

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contributions in the form of money orders and cashiers' checks in the names of straw contributors with or without their knowledge.

13. It was a part of the conspiracy that defendants NORA T. LUM and GENE K.H. LUM concealed their unlawful activities from the FEC and the public by causing the Kennedy for Senate, Kennedy for Senate 2000, and Stuart Price for Congress campaigns to submit false reports to the FEC.

D. OVERT ACTS

14. In furtherance of the conspiracy, and to accomplish its objects, defendants NORA T. LUM, GENE K.H. LUM and others committed overt acts in the District of Columbia and elsewhere, including causing the submission of false reports to the FEC by the Kennedy for Senate, Kennedy for Senate 2000, and Stuart Price for Congress campaigns.

All in violation of Title 18, United States Code, Section 371.

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CHAPTER FOUR

TONY RODHAM'S ROLE IN LOBBYING FOR GRANTS OF EXECUTIVE CLEMENCY

FINDINGS OF THE COMMITTEE

Tony Rodham's Role in the Case of Edgar and Vonna Jo Gregory

- *Tony Rodham lobbied President Clinton to grant pardons to Edgar and Vonna Jo Gregory while he was receiving substantial sums of money from the Gregorys.* Rodham received $244,769 in salary from the Gregorys over two and a half years and also received another $79,000 in loans from the Gregorys. The Gregorys claim that they paid Rodham this large sum of money for various consulting services that Rodham provided to the Gregorys. However, the Gregorys do not have any documentation reflecting work performed for them by Rodham.

- *Given the fact that the Gregorys do not have any documentary evidence reflecting the $244,769 of work performed for them by Rodham, substantial questions are raised as to what Rodham actually did for the Gregorys that was so valuable.* The most valuable thing that Rodham did for the Gregorys was to obtain presidential pardons. Therefore, there is a substantial question as to whether the Gregorys paid Rodham for his efforts to obtain presidential pardons for them.

- *If Rodham was paid to obtain presidential pardons for the Gregorys, it creates the strong appearance of impropriety.* The prospect of financial benefit for Rodham would taint Rodham's actions in lobbying for the pardon. Also, if President Clinton knew about Rodham's financial arrangement, it would taint his actions in granting the pardons.

- *Compounding the appearance of impropriety in the Gregorys case is the fact that the pardons were opposed by the Justice Department, the prosecutors responsible for the case, and the Gregorys' sentencing judge.* Apparently, the only people in the Clinton Administration who felt that the Gregorys deserved pardons were President Clinton and Deputy White House Counsel Bruce Lindsey, both of whom knew of Tony Rodham's involvement in the matter.

Tony Rodham's Role in the Case of Fernando Fuentes Coba

- *Tony Rodham offered to help Vivian Mannerud obtain a pardon for her father, Fernando Fuentes Coba, in exchange for $50,000.* When Rodham learned in late 2000 that Mannerud was seeking a pardon for her elderly father, he met with Mannerud and told her that he could help obtain the pardon if she paid him a $50,000 consulting fee. Rodham told Mannerud that he had successfully obtained pardons before and showed her the Gregorys' pardon petition to support his claim.

- *Rodham attempted to convince Mannerud to hire him by making a number of false representations to her.* Rodham told Mannerud that he was close personal friends with the Pardon Attorney, Roger Adams. Rodham also told Mannerud that he would use the $50,000 to hire a law firm to handle her case, and that Roger Adams' wife worked at the law firm, which would help her case be treated favorably. All of these representations were completely false and were apparently made to mislead Mannerud as to the purpose of the payment to Rodham.

- *Mannerud rejected Rodham's offer.* Mannerud was concerned that Rodham could not guarantee that he could obtain a pardon in exchange for the $50,000. She was also concerned about becoming embroiled in a scandal. Therefore, she rejected Rodham's offer.

- *After Mannerud rejected Rodham's offer, an associate of Rodham came back to Mannerud with another offer.* According to Mannerud, a month after she rejected Tony Rodham's proposal, Marilyn Parker, a mutual friend of Rodham's and Mannerud's who attended the initial meeting between them, came back to Mannerud and told her that Rodham now wanted only $30,000 to help her obtain a pardon for her father. Mannerud was still concerned about the nature of Rodham's proposal and rejected it.

- *The actions taken by Rodham and Parker may have been illegal.* It appears that Rodham, and maybe Parker, tried to defraud Mannerud. While this effort was unsuccessful, it may have constituted criminal conduct. The Committee recommends that the Justice Department investigate these allegations.

INTRODUCTION

Like his brother, Hugh Rodham, and his brother-in-law, Roger Clinton, Tony Rodham tried to sell his access to the White House. The Committee has investigated at least two instances in which Tony Rodham was involved in discussions regarding lobbying the White House for presidential pardons. In one case, dealing with Edgar and Vonna Jo Gregory, Tony Rodham was successful and obtained pardons on March 15, 2000. Rodham's efforts on behalf of the Gregorys are troubling given several facts: (1) the Gregorys do not appear to be suitable candidates for presidential pardons; (2) Tony Rodham used his access to the President to lobby for the pardons; and (3) Tony Rodham had an extremely lucrative financial

relationship with the Gregorys in which he apparently did very little work other than lobby for the presidential pardons.

In the other case, it appears that Tony Rodham attempted to convince Vivian Mannerud, a prominent Democratic donor who was seeking a pardon for her father, that she should hire him to help obtain the pardon. In the course of attempting to convince Mannerud to hire him, it appears that Rodham seriously misled Mannerud about his influence with the Justice Department. Rodham was seeking as much as $50,000 for his work on this matter. While Mannerud did not accept Rodham's offer, Rodham's efforts to obtain money from Mannerud might have been criminal.

Although the investigation of Tony Rodham's involvement in clemency proceedings produced important new evidence, the investigation was hampered by Tony Rodham's refusal to cooperate fully with the Committee. Though Rodham produced documents in response to a Committee subpoena, he refused to be interviewed by Committee staff. Rodham's refusal to answer questions regarding his involvement in the Gregory and Fuentes matters limited the ability of the Committee to reach definitive conclusions about certain aspects of those cases. Given Rodham's position that he did nothing improper, it is unclear why he did not want to answer questions from the Committee regarding his actions.

I. EDGAR AND VONNA JO GREGORY

A. Background

Edgar Allen Gregory, Jr., and his wife, Vonna Jo, live outside Nashville and own United Shows of America, a carnival company which puts on the Florida State Fair and more than 30 other carnivals a year.[1] The Gregorys have felony convictions dating from 1986 relating to their ownership of several banks in the 1970s. From November 1975 to April 1977, the Gregorys owned controlling interests in five Alabama banks.[2] The Gregorys' banking practices came under fire from regulators, who accused the Gregorys of making unsound loans to other companies they owned and to various associates.[3] Alabama's banking superintendent closed one of the Gregorys' banks in March 1978.[4] In a separate matter in January 1978, regulators seized another of the Gregorys' banks, the First Bank of Macon County in Notasulga, Alabama, citing "unsafe and unsound banking practices."[5]

In 1982, the Gregorys were indicted on charges that they stole $800,000 in connection with their banking activities in the 1970s, sending the bank into bankruptcy.[6] Subsequently, they were convicted of conspiring to misapply bank funds, making false state-

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[1] Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9. A news report aired by "Dateline NBC" several years ago alleged that "games of skill and chance" were rigged in United Shows fairways. At that time, Edgar Gregory said he thought such games were legal but would investigate the allegations. *See* Gregory Document Production 00004–08 ("Florida State Fair's Midway—United Shows of America, Inc.: Showmanship, Entertainment, Food, Family, Fun, Memories," 1998 Fla. State Fair Mag.) (Exhibit 1).

[2] *See* Kirk Loggins, *Local Man Denies Paying Tony Rodham to Seek Pardons*, THE TENNESSEAN, Mar. 2, 2001, at 1A.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*; Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.

ments to banks, misapplication of bank funds, and wire fraud.[7] At that time, Edgar Gregory was sentenced to two years imprisonment and his wife to three years probation.[8] The Eleventh Circuit Court of Appeals affirmed the conviction in part but also vacated in part.[9] In 1986, the case was concluded when the Gregorys pleaded guilty to conspiracy and misapplication of bank funds.[10] On October 1, 1986, Edgar Gregory and his wife were sentenced to 5 years and 3 years probation respectively.[11]

B. Tony Rodham's Relationship with the Gregorys

The Gregorys had a relationship with President Clinton predating their relationship with Tony Rodham. The Gregorys made substantial contributions to Bill Clinton when he was running for President in 1992 and continued their contributions throughout President Clinton's two terms in office.[12] By making large and frequent contributions to President Clinton's campaign, the Gregorys were able to meet with President Clinton a number of times. In total, the Gregorys met with President Clinton at least ten times while he was in office.[13]

The Gregorys first met Tony Rodham while President Clinton was campaigning for his second term.[14] They met Rodham at a small private fundraiser in Washington, D.C.[15] Rodham apparently used such fundraisers as a venue to solicit business opportunities for his consulting firm[16] and develop a network of associates from which he could generate cash not only for political purposes but

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[7] Tony Rodham Document Production 000029 (Petition for Pardon After Completion of Sentence for Vonna Jo Gregory, Nov. 10, 1998) (Exhibit 2); Gregory Document Production (Petition for Pardon After Completion of Sentence for Edgar Allen Gregory, Jr., Nov. 10, 1998) (Exhibit 3). *See also Florida Officials Investigating Couples State Fair Contract Extension*, ASSOCIATED PRESS STATE AND LOCAL WIRE, Mar. 8, 2001.

[8] *Id.*

[9] *U.S. v. Gregory*, 730 F.2d 692, 706 (11th Cir. 1984). *See also Florida Officials Investigating Couples State Fair Contract Extension*, AP STATE AND LOCAL WIRE, Mar. 8, 2001.

[10] Kirk Loggins, *Local Man Denies Paying Tony Rodham to Seek Pardons*, THE TENNESSEAN, Mar. 2, 2001, at 1A.

[11] Tony Rodham Document Production 000029 (Petition for Pardon After Completion of Sentence for Vonna Jo Gregory, Nov. 10. 1998) (Exhibit 2); Gregory Document Production (Petition for Pardon After Completion of Sentence for Edgar Allen Gregory, Jr., Nov. 10, 1998) (Exhibit 3). *See also* Kirk Loggins, *Local Man Denies Paying Tony Rodham to Seek Pardons*, THE TENNESSEAN, Mar. 2, 2001, at 1A.

[12] According to the Center on Responsive Politics, United Shows, the Gregorys' company, has ranked among the top 6 entertainment industry companies contributing to federal candidates and committees in the last three two-year campaign cycles. According to campaign finance disclosure records, United Shows contributed $50,000 to the DCCC in 2000, $25,000 to the DNC in 1998, and $10,000 to the Democratic Senatorial Campaign Committee in 1998. According to financial disclosure records, the Gregorys also contributed a total of $4,500 to Senator Hillary Rodham Clinton in 1999 and 2000, $11,000 to the New York Senate 2000 Committee, $1,000 to President Clinton in 1995, $4,000 to Vice President Gore, $8,000 to the Tennessee Democratic Party, and $5,000 to the Democratic National Committee in 1992. During 1999 and 2000, the Gregorys, their children, and their company and its employees reportedly contributed a total of $294,000. Although the Gregorys contributed to Republican political interests during that period, eighty-nine percent of the Gregorys' contributions in that interim reportedly went to Democrats.

[13] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001). *See also* Gregory Document Production (Invitation to birthday party for Hillary Rodham Clinton, Oct. 27, 1997) (Exhibit 4); Gregory Document Production (Facsimile driving instructions from Daniela Castro-Quijada, Tony Rodham & Associates, to Edgar and Vonna Jo Gregory to birthday party for Hillary Rodham Clinton (Oct. 24, 1997)) (Exhibit 5). The Gregorys declined that invitation. *See* Letter from Deborah L. McGee, Secretary to Howard Vine, Greenberg Traurig, to David Kass, Deputy Chief Counsel, Comm. on Govt. Reform (June 7, 2001) (within Appendix I).

[14] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[15] *Id.*

[16] In a televised interview, Rodham described himself as a "general consultant" and someone "who solves problems for people." Interview by Larry King, CNN, with Tony Rodham (Mar. 3, 2001) ("I just bring different peoples together. I help them negotiate deals.").

also for his personal use. At the fundraiser, Rodham introduced himself to the Gregorys as he was making the rounds in the room.[17] The Gregorys cannot recall how many times or in what contexts they subsequently met Rodham.[18] But, in the period that followed, a substantial business relationship between the Gregorys and Rodham developed. Around August 1997, Rodham approached the Gregorys and asked them to hire him as a consultant for their carnival and music businesses.[19] Rodham told the Gregorys that he could be helpful to them in securing contracts or other opportunities for their businesses.[20] Rodham also suggested that he had contacts in the real estate and music businesses.[21]

In August 1997, Rodham provided the Gregorys with a proposed consulting services agreement.[22] Under Rodham's proposal, he would be retained to provide "general consulting services" to United Shows of America.[23] Rodham proposed that he be paid a retainer of $200,000 in addition to $2,500 per month for his labors.[24] The Gregorys substantially revised Rodham's proposed agreement before signing it in June 1998. The main change made by the Gregorys was eliminating the $200,000 retainer. With their changes, Rodham received $2,500 per month from the Gregorys as well as a $25,000 "signing bonus."[25] In addition, the Gregorys agreed to pay at their discretion additional bonuses to Rodham for specific services provided by Rodham.[26] Rodham also received health benefits and the use of a 1995 Chevrolet Suburban.[27]

Over the course of his relationship with the Gregorys and United Shows, Tony Rodham received a substantial sum of money. Rodham received a total of $62,985 in 1998,[28] $85,806.27 in 1999,[29] $93,978.66 in 2000,[30] and at least $2,000 in 2001.[31] In addition to the $244,769 he received in salary from the Gregorys, Rodham also received a substantial sum in personal loans. Rodham apparently had significant expenses resulting from his divorce, and, therefore, he asked the Gregorys to loan him money for expenses ranging

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[17] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001). *See* Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9.

[18] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[19] *Id.*

[20] *Id.* This paragraph was added by the Gregorys to the draft Rodham originally submitted to them.

[21] *Id.*; Gregory Document Production (Consulting Services Agreement between Tony Rodham & Associates and Anthony D. Rodham and United Shows of America, *et al.* (June 6, 1998)) (Exhibit 6).

[22] Tony Rodham Document Production (Draft of Consulting Services Agreement between Tony Rodham & Associates and United Shows of America (Aug. 1, 1997)) (Exhibit 7).

[23] *Id.*

[24] *Id.*

[25] Gregory Document Production (Consulting Services Agreement between Tony Rodham & Associates and Anthony D. Rodham and United Shows of America, *et al.* (June 6, 1998)) (Exhibit 6).

[26] *Id.*

[27] *Id. See also* Letter from Deborah L. McGee, Secretary to Howard Vine, Greenberg Traurig, to David Kass, Deputy Chief Counsel, Comm. on Govt. Reform (June 7, 2001); Gregory Document Production (Certificate of Vehicle Registration Renewal, Dec. 5, 2000) (Exhibit 8); Gregory Document Production (Vehicle inspection report, Dec. 5, 2000) (Exhibit 9); Gregory Document Production (Insurance Enrollment Form submitted by Tony Rodham for life and health insurance to be provided by United Shows of America, Mar. 29, 1999) (Exhibit 10).

[28] Gregory Document Production (1998 IRS 1099 for Tony Rodham by United Shows of America) (Exhibit 11).

[29] Gregory Document Production (1999 IRS 1099 for Tony Rodham by United Shows of America) (Exhibit 12).

[30] Gregory Document Production (2000 IRS 1099 for Tony Rodham by United Shows of America) (Exhibit 13).

[31] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

from lawyer's fees to school tuition for his son. The Gregorys started loaning Rodham money in early 2000.[32] In total, the Gregorys made more than ten separate loans to Rodham, all of which were consolidated into one promissory note for $72,000 payable in December 2001 at eight percent interest.[33] According to the Gregorys, Rodham said that "he was working on a deal and expected a large payment before the note [was] due."[34] In 2001, the Gregorys loaned Rodham an additional $7,000.[35] Despite that the loan was due in December 2001, there is no evidence that Rodham has repaid this loan, and the Gregorys' attorney informed Committee staff that he believes that Rodham has not repaid the loan.

From 1998 to 2001, Tony Rodham received a total of $323,769 in salary and loans from the Gregorys. A central question is whether he was paid by the Gregorys to help obtain their pardon or whether Rodham was paid for legitimate business services.

The Gregorys have referred to several efforts Rodham made to obtain business for them and their company, United Shows. For example, Edgar Gregory indicated that Rodham had contacts with officials in the United Arab Emirates as part of an unsuccessful effort to bring an "American-style" carnival to Dubai.[36] With the input of his sister, First Lady Hillary Rodham Clinton, Rodham did help the Gregorys obtain a contract to put on an "old style" carnival at the White House in 1998 and 2000.[37] Rodham also obtained information from the State Department for the Gregorys about doing business overseas and reportedly did some unspecified "public relations" for the Gregorys.[38] In an interesting twist, the Gregorys also indicated that Rodham's work for them also included bringing them investment possibilities.[39] The Gregorys said that Rodham asked them to invest in an overseas telecommunications project and a $118 million hazelnut scheme conceived by Tony and Hugh Rodham.[40] In essence, the Gregorys make the claim that

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[32] *Id.*

[33] Tony Rodham Document Production 000003–04 (Promissory Note from Tony Rodham to United Shows of America (Dec. 12, 2000)) (Exhibit 14).

[34] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[35] *Id.*

[36] Letter from Edgar and Vonna Jo Gregory to the Honorable Dan Burton, Chairman, and David Kass, Deputy Chief Counsel, Comm. on Govt. Reform (June 12, 2001) (within Appendix I). *See also* Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001); Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9.

[37] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001). According to the Gregorys, Tony Rodham told them that Hillary Rodham Clinton asked him to contact them about having an "old-time" carnival at the White House. *Id.*

[38] *Id.*

[39] Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9.

[40] Letter from Edgar and Vonna Jo Gregory to the Honorable Dan Burton, Chairman, and David Kass, Deputy Chief Counsel, Comm. on Govt. Reform (June 12, 2001) (within Appendix I). *See also* Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001); Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9. The latter deal involved growing and exporting hazelnuts from the former Soviet Republic of Georgia. Letter from Edgar and Vonna Jo Gregory to the Honorable Dan Burton, Chairman, and David Kass, Deputy Chief Counsel, Comm. on Govt. Reform (June 12, 2001) (within Appendix I). *See also* Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001); Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9; John F. Harris, *Hazelnut Flap Is Building; White House Disavows Clinton In-Law's Foreign Dealings*, Wash. Post, Jan. 1, 2000, at A6; Viveca Novak and Jay Branegan, *Are Hillary's Brothers Driving Off Course—Hugh and Tony Rodham Are Bill Clinton's In-laws, a Connection That's Brought Them Pain and Gain,* TIME, Nov. 1, 1999, at 46. In that deal, the Rodhams entered into a partnership with the political rival of President Eduard A. Shevardnadze whose government, then only tenuously in power, enjoyed the support of the Clinton Administration. *See* Sack, *supra* (and other cited authority). After the State Department complained that the deal was causing diplomatic tension, the deal was abandoned. *Id.* Rodham's other international business ventures

they paid Rodham to ask them to invest in other schemes in which he was involved. There is no evidence that Tony Rodham's investment advice was in such demand that the Gregorys had to pay to be solicited by Rodham.

Critically, the Gregorys did not provide the Committee with a single document reflecting work performed for them by Tony Rodham. Given the fact that the Gregorys were subpoenaed to provide the Committee with "[a]ll records reflecting work performed for you or your company by Tony Rodham," such records should have been produced to the Committee if they existed. Therefore, it is safe to conclude that the Gregorys do not have a single document reflecting substantive work performed for them by Tony Rodham despite the fact that they paid him $244,769 in salaries and loaned him another $79,000. Such a lack of documentation supports the conclusion that Tony Rodham performed little or no substantive valuable work for the Gregorys apart from the failed effort to stage a carnival in Dubai and the effort to stage carnivals at the White House. The Gregorys attempted to explain the lack of documentation in a letter to Chairman Burton:

> [We] certainly do not deny he has either sent or brought to us a great deal of information over the years, of which a lot of Tony's ideas were over the telephone and not in writing, that he thought we may be interested in investing in, as a management partner, and/or that he thought we might be interested in taking a financial position in.[41]

However, since the Gregorys did not produce to the Committee any documentation of the work performed for them by Rodham, it is possible that the large sum of money paid to Tony Rodham by the Gregorys was compensation for Rodham's efforts to obtain pardons for the Gregorys.

C. Tony Rodham's Efforts to Help the Gregorys Obtain Pardons

In 1998, the Gregorys became interested in seeking presidential pardons, primarily because their convictions undermined their ability to obtain carnival contracts.[42] In cases where bid applications specifically requested criminal history, the Gregorys were some-

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were equally unimpressive. For example, in 1998, Rodham and Stephen Graham, a business partner, met with Prime Minister Hun Sen of Cambodia in that country in search of new business opportunities. Lisa Getter, *Family Ties Put Rodham Brothers In Spotlight*, L.A. TIMES, Mar. 4, 2001, at A1; Robin McDowell, *Brother of U.S. First Lady Meets Cambodia Strongman on Business Trip*, ASSOCIATED PRESS, July 14, 1998. As with Rodham's initiative in the Republic of Georgia, the State Department, which had difficulty with Cambodia's human rights record, expressed concern about Rodham's dealings in that country. *See* Getter, *supra* (and other cited authority). Rodham was equally oblivious to the policy implications of his "business trips" when he went to Taiwan and met with Taiwanese Vice President Annette Lu. *See* Getter, *supra*; Deborah Kuo, *ROC Vice President Meets US First Lady's Brothers*, CENTRAL NEWS AGENCY (Taipei), June 23, 2000. Taiwanese government officials who attended the meeting "considered [the meeting] very hush-hush." *See* Getter, *supra.* According to one such official, "Nobody wanted to talk about [the meeting] because [Rodham's] brother-in-law was the president—because if China knew about the trip, they might raise issues." *Id.* Not surprisingly, as was the case with Rodham's other attempts to develop international business opportunities, no deal emerged from Rodham's trip to Taiwan. *Id.*

[41] Letter from Edgar and Vonna Jo Gregory to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (June 12, 2001) (within Appendix I).

[42] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

times barred from bidding for contract business.[43] In some cases, according to the Gregorys, their competitors sent fair officials information regarding their criminal history.[44] One of the largest problems faced by the Gregorys during this time period related to their role as the primary contractor for the Florida State Fair. The Gregorys took over as primary contractor for the Fair in 1998 and soon found that their criminal convictions were posing a problem for Florida state officials.

Faced with the possible loss of significant business relating to state fairs, the Gregorys decided to file for pardons. They consulted with their son, David Gregory, a lawyer, as well as Greenberg Traurig, a prominent Florida law firm.[45] The Gregorys prepared the relevant paperwork and filed their pardon petition with the Justice Department on November 14, 1998.[46] It appears that, on that same day, the Gregorys also sent copies of their pardon petitions directly to the White House and requested that President Clinton "[p]lease personally review the application and exhibits enclosed herein."[47]

After the pardon petition was filed, the Gregorys and their Greenberg Traurig lawyers remained in contact with the Justice Department. Mark Schnapp, one of the Gregorys' lawyers at Greenberg Traurig, met with Pardon Attorney Roger Adams and Helen Bollwerk, another staff attorney in the Pardon Attorney's office, to discuss the petition.[48] Specifically, Schnapp informed them that the Gregorys' convictions were adversely impacting their business in relation to the Florida State Fair.[49] He also told them that the Gregorys needed the pardons by February 2000 if they were to help with the contracting process in Florida.[50] Justice Department staff asked the Gregorys or their representatives on several occasions for additional information with respect to the pardon petitions. Throughout their contacts with the Justice Department, the Gregorys and their attorneys believed that the Justice Department was "understanding," and they never developed a sense that the Department viewed their petition negatively.

Nevertheless, by late 1999 the Gregorys had not received their pardons, and they were growing impatient. The Gregorys approached Tony Rodham for his assistance with the pardon at a party in late 1999 or early 2000.[51] At this point, Rodham had been

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[43] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001); Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1; Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9; Kirk Loggins, *Local Man Denies Paying Tony Rodham to Seek Pardons*, THE TENNESSEAN, Mar. 2, 2001, at 1A.

[44] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[45] *Id.*

[46] *Id. See also* Gregory Document Production 000144 (Letter from Vonna Jo Gregory to Roger Adams, Pardon Attorney, Department of Justice (Nov. 16, 1998)) (Exhibit 15); Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.

[47] Tony Rodham Document Production 000028 (Letter from Vonna Jo Gregory to President William J. Clinton (Nov. 14, 1998)) (Exhibit 16).

[48] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[49] *Id. See also* Gregory Document Production (Letter from Bob Crawford, Commissioner, Florida Department of Agriculture and Consumer Services to Roger Adams, Pardon Attorney, Department of Justice (Jan. 28, 2000)) (Exhibit 17) (urging Pardon Attorney to consider Gregorys' clemency application expeditiously because of impending contract negotiations regarding Florida State Fair).

[50] *Id.*

[52] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001). *See also* Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES,

on the Gregorys' payroll for a year and a half. Edgar Gregory described his request to Tony Rodham as follows: "Tony, we've applied for a pardon, and if you can help us in any way, we'd really appreciate it."[52] Gregory recalls that Rodham initially replied, "I don't really get involved in that" and suggested that pardons were handled at the Justice Department.[53] According to Edgar Gregory, Rodham gave them the impression that he could not help much with their pardon petition but that "if he could do anything, he would."[54] Edgar Gregory stated that he saw Tony Rodham occasionally between late 1999 and March 2000 when he and Vonna Jo Gregory received their pardons. Edgar Gregory occasionally raised the pardon effort with Rodham, even once telling him that the Justice Department was "putting them through the wringer" with respect to their pardon applications.[55] But Rodham said little to encourage them and did not tell them that he had raised the pardons with his brother-in-law or sister.[56]

In their interview with Committee staff, the Gregorys and their attorneys attempted to minimize the role of Tony Rodham in obtaining the pardons. They discounted the importance of Rodham's role in obtaining pardons. They claimed that the Justice Department had the predominant role in processing the Gregorys' petition, and since Tony Rodham did not have any influence at the Justice Department, Rodham was not "necessary" to the process.[57] However, common sense and the evidence in this case suggest that the Gregorys' basic story—that they believed that Rodham was not important to the pardon process—is not true. Rather, Tony Rodham had a significant role in obtaining the pardons, and the Gregorys attached some importance to Rodham's efforts.

First, the suggestion by the Gregorys and their lawyers that Rodham's participation was not significant because he did not have influence at the Justice Department is absurd. Obviously, when seeking Presidential pardons, it is far more important to have influence and access to the President of the United States than the Pardon Attorney or any other Justice Department staffer. Tony Rodham had this access and used it to lobby for the Gregorys' pardons.

Second, Edgar Gregory did more than merely mention his pardon effort to Tony Rodham in an off-hand manner. Gregory provided Rodham with a copy of his pardon petition as well. When Committee staff initially asked Gregory why he provided Rodham with a copy of the petition, he was initially unable to provide an explanation. Then, he suggested that he gave Rodham a copy of the petition just so that Rodham would not be "blindsided" by the fact that

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Mar. 1, 2001, at A1. Vonna Jo Gregory believes that Rodham first became aware of their convictions in connection with their bid for the Florida State Fair, but it was in December 1999 that the Gregorys expressed to Rodham disappointment about not having been pardoned and asked him for help. *Id.*

[51] *Id. See also* Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.

[53] Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.

[54] Telephone Interview with Edgar and Vonna Jo Gregory (Apr. 2, 2001).

[55] *Id.*

[56] *Id.*

[57] *Id.*

they had applied for a pardon.[58] Gregory vehemently denied that he had given Rodham a copy of the petition so that Rodham could hand-carry it to the White House or otherwise influence the pardon process.[59] If Gregory did provide Rodham with a copy of the pardon petition so that he could hand-carry it to the President or so that Rodham could make a more impressive pitch to the President, it would undermine the Gregorys' claim that they did not place any significance on Rodham's efforts.

Despite the Gregorys' protestations, it appears that Rodham did have a significant role in the pardon process. Rodham would not agree to an interview with Committee staff regarding his role in the Gregory pardons. Nevertheless, he did describe some of his activities to the press. According to these reports, Rodham asked President Clinton to pardon the Gregorys.[60] Specifically, he stated, "I didn't push. I told the President about Ed Gregory and that he had applied for a pardon. He's what the pardon process is all about."[61] Rodham has recalled publicly that he told President Clinton that the Gregorys' pardon petition had been filed through the Justice Department and argued to the President that pardons for the couple "made good sense."[62] He told the President that "[Edgar Gregory] is repentant for what he did" and "[the offenses for which the Gregorys were convicted were] white-collar crime[s] involving banking irregularities. He's paid his taxes. He's run a respectful business for 40 years. He's a good guy."[63] It also appears that Rodham claimed that the Gregorys were deeply involved in charitable activities in Tennessee and throughout the country.[64] Rodham also called Deputy White House Counsel Bruce Lindsey about the Gregory pardons. Lindsey stated that Rodham's call to him was "mostly concerned about the fact that the application had been pending over in the Justice Department[,] and [he] asked me whether I could try to move it along."[65] Either at that point or subsequently, Lindsey became aware that Rodham had spoken to the President.[66]

D. Deliberations by the Administration

According to press reports, the Justice Department opposed the Gregory pardons because the Gregorys did not "accept the criminality of their actions."[67] The United States Attorney who prosecuted the case as well as the judge responsible for sentencing the Gregorys also opposed the pardons.[68] According to federal prosecutors,

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[58] *Id.*
[59] *Id.*
[60] Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *See* Interview by Larry King, CNN, with Tony Rodham (Mar. 3, 2001).
[65] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 254 (Mar. 1, 2001).
[66] *Id.* Howard Vine, one of the Greenberg Traurig attorneys representing the Gregorys, also called Deputy White House Counsel Bruce Lindsey and White House Counsel Beth Nolan. Vine describes those calls as "largely procedural."
[69] Kevin Sack, *Pardoned Couple Say Access Has Served Them Well*, N.Y. TIMES, Mar. 10, 2001, at A9.
[67] Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1. *See also* Interview with Meredith Cabe, Associate Counsel to the President, the White House (Mar. 16, 2001). However, due to the Bush Administration's refusal to produce to the Committee records relating to the consideration of pardon petitions

the Gregorys' activities as owners of several small Alabama banks were blatantly fraudulent; such activities included arranging unsecured loans to themselves, their friends, and other companies they owned.[69] Ginny S. Grande, the assistant U.S. Attorney who prosecuted the Gregorys, noted, "[The Gregorys] drained the banks that they were majority shareholders in and just ran them into the ground for this interconnecting web of companies they owned. They ran those banks with an iron fist."[70] The question then is why were these recommendations ignored.

There is evidence indicating that the President, not White House staff, was the driving force behind the Gregory pardons. Associate White House Counsel Meredith Cabe, the primary White House lawyer responsible for processing clemency petitions, recalls that Bruce Lindsey and Beth Nolan told her that someone had raised the Gregory case with the President because the President had been asking them about the case.[71] Former Clinton aides have publicly conceded that President Clinton expressed a strong desire to Justice Department officials to have the Gregorys pardoned.[72] In speaking to Deputy White House Counsel, Bruce Lindsey, President Clinton "indicated . . . that he understood that the Gregorys were unable to do business in certain states, and that competitors of the Gregorys were raising their conviction some 17, 18 years ago as a basis as to why various states shouldn't do business with them."[73] According to Lindsey, President Clinton "thought that was not fair."[74] In testimony before the Committee, Lindsey elaborated as follows:

> The President's belief on pardons is that if a person makes a mistake, does something illegal, wrong, if they have paid the price for that, if they have gone to jail or they go on probation and then they live a good life from that point on forward, that they should not be denied the restoration of their rights because of that. He certainly would believe that a person 17 years afterwards shouldn't have a conviction be used to keep them from making a living. And, therefore, believed that if, in fact, they had lived a good life, if they had not been in additional trouble from that point[.][75]

Because Lindsey believed that the Gregorys "were being financially hurt because of a conviction 17, 18 years ago and that they had done nothing subsequent to be in trouble with the law, that

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by the Justice Department and Clinton White House, the Committee has not obtained any records from the Justice Department regarding the consideration of the Gregory pardon. Therefore, the Committee does not know the specific reasons the Justice Department opposed the Gregorys' petition.

[68] *Id.*

[70] *Id.* Federal prosecutors have noted that the Gregorys also used the Wilcox County Bank in Camden, Alabama, to buy goods from their other companies. For example, that bank ordered 10,000 job application forms from a company owned by the Gregorys for another bank with 20 employees in a town of 2,000 people.

[71] Interview with Meredith Cabe, Associate Counsel to the President, the White House (Mar. 16, 2001).

[72] Marc Lacey and Don Van Natta, Jr., *Second Clinton In-Law Says He Helped to Obtain Pardon*, N.Y. TIMES, Mar. 1, 2001, at A1.

[73] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 255 (Mar. 1, 2001).

[74] *Id.*

[75] *Id.*

they were deserving of a pardon," he recommended that President Clinton consider the petition.[76] Meredith Cabe did not find the merits of the Gregorys' petition particularly compelling.[77] For her part, White House Counsel Beth Nolan does not recall her position on the Gregory case. Cabe recalls that Nolan was not opposed to the pardons and recommended that the President review the case.[78] On March 15, 2000, President Clinton pardoned the Gregorys of their convictions.[79]

E. Conclusion

There are several troubling facts regarding Tony Rodham's lobbying efforts on behalf of the Gregorys:

- Tony Rodham was provided with $323,769 by the Gregorys for work for which there is little documentary evidence.
- Rodham lobbied his brother-in-law, President Clinton, and Deputy White House Counsel Bruce Lindsey in support of the Gregorys' pardons.
- President Clinton granted the Gregorys' pardons despite the fact that the Justice Department, relevant prosecutors, and the sentencing judge all objected to the pardon. The Gregorys' only qualification for the pardons was that they had a lucrative business which was being adversely impacted by their criminal record and that they had hired the President's brother-in-law.
- A full understanding of these facts has been further complicated by the refusal of Tony Rodham to cooperate with the Committee and the refusal of the Bush Administration to provide the Committee with all records relating to the consideration of the Gregory pardons.

The Committee is able to conclude that Rodham was paid a significant amount of money by the Gregorys and apparently did little for them other than lobby for their pardons. However, there is not sufficient evidence to conclude definitively that the Gregorys hired Rodham for the express purpose of using him to lobby for Presidential pardons. However, the time period during which the Greg-

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[76] *Id.*; Interview with Meredith Cabe, Associate Counsel to the President, the White House (Mar. 16, 2001). To the extent that the Gregorys believed that a presidential pardon would require that they no longer disclose their convictions when applying for state carnival contracts, it appears that they were wrong. According to Pardon Attorney Roger Adams, a pardon "does not erase or expunge the record of conviction and does not indicate innocence." Letter from Roger Adams, Pardon Attorney, Department of Justice, to Mark Schnapp, Counsel to Edgar and Vonna Jo Gregory, Greenberg Traurig (Mar. 15, 2000) (Exhibit 18). As Adams indicated to the Gregorys, "On any application or other document which requires the information, a pardon recipient should disclose the fact of his or her conviction." *Id.*

[77] *See* Interview with Meredith Cabe, Associate Counsel to the President, the White House (Mar. 16, 2001).

[78] *Id.*

[79] *See* Gregory Document Production (Letter from Roger Adams, Pardon Attorney, Department of Justice, to Mark P. Schnapp, Counsel to Edgar and Vonna Jo Gregory, Greenberg Traurig (Mar. 15, 2001)) (Exhibit 18) (describing President Clinton's grant of clemency); Gregory Document Production (Warrant of Executive Grant of Clemency for Vonna Jo Gregory, Mar. 15, 2000, and Acknowledgement Form, Mar. 17, 2000) (Exhibit 19); Gregory Document Production (Warrant of Executive Grant of Clemency for Edgar Allen Gregory, Mar. 15, 2000, and Acknowledgement Form, Mar. 17, 2000) (Exhibit 20). *See also* Gregory Document Production (Letter from Edgar Allen and Vonna Jo Gregory to President William J. Clinton (Mar. 16, 2000)) (Exhibit 21) (thanking President for grant of clemency).

orys were seeking presidential pardons and during which they were paying Rodham overlapped substantially; therefore, it is probable that Rodham was paid for his efforts to obtain pardons for the Gregorys. This conclusion is also bolstered by Tony Rodham's subsequent attempted to use his success in the Gregorys' case to obtain payments to help others obtain pardons, described below.

It is clear that Rodham had a significant role in obtaining pardons for the Gregorys. Reportedly, those individuals who were familiar with the Gregory case—the Pardon Attorney, federal prosecutors and the sentencing judge—did not believe that they should be pardoned. However, those people who were lobbied by Tony Rodham—President Clinton and Bruce Lindsey—did believe that they should be pardoned. As in the case of many other questionable grants of clemency issued by President Clinton, the impetus for the Gregory pardons came from the President himself. It appears that the President was interested in the Gregory pardons solely because of his contacts with Tony Rodham. It is fair to conclude that, but for Tony Rodham's lobbying efforts, the Gregory pardons would not have been granted.

One of the factors supporting the conclusion that Rodham was indispensable to the Gregorys' pardon effort is the Gregorys' unsuitability for presidential pardons. The Gregorys committed a serious crime, defrauding banks they owned out of substantial funds for their personal benefit. Tony Rodham himself was unable to provide much of a justification for the Gregory pardons:

> TONY RODHAM. The Gregorys are the kind of people that the pardon system is made for.
>
> LARRY KING. Because?
>
> TONY RODHAM. They are people—well, they're tax-paying citizens. They've been involved in different charitable organizations. They do a tremendous amount of help in their community in Nashville and throughout the rest of the country. Florida, where they do the Florida State Fair every year, they do a tremendous amount of money every year. They do a tremendous amount of money that has gone into the Florida state government's coffers.[80]

It appears that the primary motivation for the pardons was the fact that the Gregorys were finding that their criminal histories were an impediment to receiving state contracts. Of course, such difficulties are the natural and fair result of criminal convictions, not by themselves a justification for pardons.

However, there are also unanswered questions about the Gregory case. The most significant question is whether the President or First Lady knew of the financial relationship between Tony Rodham and the Gregorys when Rodham was lobbying the President for the pardons. In his testimony before the Committee, Deputy White House Counsel Bruce Lindsey stated that this financial relationship "was unknown to me until I read it in paper [this] morning [of the hearing]."[81] Lindsey testified that he did not know

[80] Interview by Larry King, CNN, with Tony Rodham (Mar. 3, 2001).

[81] "The Controversial Pardon of International Fugitive Marc Rich," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 256 (Mar. 1, 2001).

if the President knew of Rodham's financial relationship with the Gregorys.[82] In a statement to the press, Hillary Clinton stated that "[t]hese are people he has known for some time . . . he has a personal relationship with them. He was not paid. I think there's a distinction between someone whom you've known for a number of years . . . and taking money on behalf of people he didn't know and had no personal relationship with."[83] At the time Senator Clinton made her statement about the Gregory case, it had already been publicly disclosed that Tony Rodham was working as a paid consultant. Therefore, her statement that Tony Rodham "was not paid" is not accurate. However, her statement does not make it clear whether she knew of Tony Rodham's lucrative financial relationship with the Gregorys at the time he was lobbying the White House for their pardons.

If the President or First Lady did know that Tony Rodham was receiving substantial sums of money from the Gregorys at the time he was lobbying the White House for their pardons, it would cast substantial doubt on the motivations of the President for issuing the pardons. It would appear that the President was not motivated by any genuine belief in the merits of the Gregorys' case, particularly given the fact that such merits did not exist. Rather, it would appear that he was motivated by the desire to help his brother-in-law cash in. Such a case would be a quintessential conflict of interest. However, given the failure of the President to address the details of his decisionmaking in the Gregorys case and other controversial grants of clemency, the public will likely never know his true motivations.

II. FERNANDO FUENTES COBA

In the course of its investigation, the Committee discovered that Tony Rodham attempted to become involved in lobbying for a presidential pardon for another individual, Fernando Fuentes Coba. In this case, Rodham solicited a large payment from Fuentes' daughter, Vivian Mannerud, in return for the promise to lobby for Fuentes' pardon. It appears that Rodham and an associate of Rodham's made misleading statements to Mannerud in an attempt to get her to pay Rodham to work on the case. The Fuentes case combines the unsavory aspects of Rodham's work on the Gregory matter—a blatant attempt by Rodham to sell his influence—with a potentially illegal attempt to defraud Vivian Mannerud.

A. Background on Fernando Fuentes Coba

In the late 1970s, Fernando Fuentes Coba started an airline charter business called American Airways Charters, Inc. ("AAC"). AAC took advantage of changes in U.S. law permitting charter flights to Cuba and, over the next several years, built a successful business based on flights between the U.S. and Cuba.[84] After the Mariel boatlift, Fuentes, AAC, and a number of other companies and individuals were investigated for having violated U.S. law in

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[82] *Id.*

[83] *Hillary Clinton Defends Brother Tony*, ASSOCIATED PRESS STATE AND LOCAL WIRE, Mar. 1, 2001.

[84] Tony Rodham Document Production 000020 (Attachment B to Pardon Application of Fernando Fuentes Coba) (Exhibit 24).

connection with having facilitated the Mariel Boatlift. In 1982, Fuentes, seven other individuals, and four corporations were indicted for what U.S. customs officials described as a "big, gigantic conspiracy by the Cuban Government to obtain U.S. currency" in connection with the Mariel Boatlift.[85] In late 1982, Fuentes was convicted of conspiring to trade with the enemy and violating the Cuban Assets Control Act in connection with the shipment of goods to Cuba.[86] Fuentes was sentenced to a term of one-year imprisonment and a $10,000 fine.[87] After having his appeals rejected, in 1985, Fuentes was ordered to report to prison.[88] Rather than report, Fuentes fled to Mexico where he remained a fugitive until his death.[89]

While a fugitive, Fuentes apparently became very ill, suffering from heart disease, stroke, two aortic aneurysms, emphysema, and diabetes.[90] In 2000, Fuentes apparently decided that he wanted to return to the U.S. to receive medical treatment and be close to his family without serving his prison sentence.[91] Helping Fuentes achieve this goal was his daughter, Vivian Mannerud. Mannerud, a prominent Democratic contributor who has raised or contributed hundreds of thousands of dollars, is also involved in the charter airline business and has arranged a number of high-profile flights between the U.S. and Cuba.[92] Mannerud was herself embroiled in controversy when she solicited convicted cocaine dealer Jorge Cabrera to contribute to the DNC and arranged for Cabrera to be photographed with President Clinton. Mannerud also had $22,000 in contributions returned by the Senate campaign of Hillary Clinton when the press reported on Mannerud's role in the Cabrera matter.[93]

Mannerud initially attempted to resolve her father's case by contacting the U.S. Attorney's office.[94] Mannerud attempted to negotiate her father's return to the United States, claiming he could stay in a hospital in lieu of incarceration.[95] When Mannerud concluded that the U.S. Attorney's Office could not give her any guar-

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[85] *8 People, 4 Companies indicted in Cuba Sealift*, N.Y. TIMES, Feb. 26, 1982, at A14.

[86] Tony Rodham Document Production 000017 (Attachment A to Pardon Application of Fernando Fuentes Coba) (Exhibit 23).

[87] *Id.*

[88] *Id.*

[89] Telephone Interview with Vivian Mannerud (Aug. 28, 2001). Fuentes was sentenced to a term of one year in prison but, according to Mannerud, was "fearful for his life" because "there were drug dealers there" and he "would have been lumped in as a communist." According to Mannerud, Fuentes "decided not to go" to jail for that reason. *See also* Mark Hosenball, *Periscope*, NEWSWEEK, Mar. 11, 2002 (noting Fuentes' death).

[90] Tony Rodham Document Production 000021 (Attachment C to Pardon Application of Fernando Fuentes Coba) (Exhibit 25).

[91] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).

[92] For example, Mannerud was instrumental in arranging for Elian Gonzalez's Cuban grandparents to visit the United States. *See* Carol Rosenberg, *Longtime Air Charter Operator Set to Retire*, MIAMI HERALD, Nov. 6, 2000, at 1B. She also provided the charter for U.S. celebrities to attend the 1999 game between the Baltimore Orioles and the Cuban national team.

[93] *See* Carol Rosenberg, *Donor Gets Angry at Democrats*, MIAMI HERALD, Apr. 21, 2000, at 1B. When her money was returned by the Clinton campaign, Mannerud stated, "I think . . . they have to stop calling me for money, begging me for money, haunting me for money" and recommended that the Democratic Party return to her the "several hundred thousand dollars" she had given in the preceding years. *Id.*

[94] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).

[95] *Id.*

antees, she and her attorney, Lonnie Anne Pera, prepared a pardon petition on her father's behalf.[96]

B. The Pardon Attorney Refuses to Process Fuentes' Clemency Petition

Around late October 2000, Mannerud sent her father's pardon petition to the Office of the Pardon Attorney at the Department of Justice.[97] In the petition, Fuentes did not indicate any remorse for his crimes. Rather, he maintained his innocence and claimed selective prosecution and ineffective assistance of counsel.[98] Fuentes also did not express regret for having fled the United States after his conviction. Rather, he claimed that he fled the country because he "feared that anti-Castro groups would seriously injure, maim, or kill me in prison."[99]

On November 7, 2000, Pardon Attorney Roger Adams sent a letter to Mannerud's attorney stating that the Justice Department would not process Fuentes' petition because he was a fugitive.[100] Adams explained that:

> Mr. Coba is ineligible to apply for a presidential pardon. Pursuant to 28 C.F.R. § 1.2 . . . "[n]o petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement . . . ." Because Mr. Coba has served none of his prison sentence, he fails to meet this most basic eligibility requirement for pardon consideration. Moreover, the Department of Justice has consistently declined to accept pardon petitions from individuals, such as Mr. Coba, who are fugitives, since the pardon process assumes the Government's ability to implement either of the President's possible decisions regarding a petition—that is, a denial of clemency as well as a grant of clemency. Put another way, it is not reasonable to allow a person to ask that the President grant him a pardon which, if granted, would have the effect of eliminating the term of imprisonment to which he has been sentenced, while at the same time insulating himself from having to serve the sentence if the pardon is denied.[101]

The Justice Department's application of the foregoing policy, whereby it does not even consider pardon petitions from fugitives, stands in marked contrast to how the policy was applied in the

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[96] *Id.* Mannerud did so through the assistance of her attorney in Washington, Lonnie Pera, an aviation attorney. *See* Tony Rodham Document Production 000005 (Fernando Fuentes Coba Pardon Petition) (Exhibit 22).

[97] *Id.* In an interview with Committee staff, Mannerud could not recall exactly when she sent the petition to the Pardon Attorney's Office. She believed that she probably did so about a month before the date on a White House document which states that Fuentes "just applied" for a pardon. That document is dated November 27, 2000. Mannerud's recollection that she sent the petition late in 2000 accords with her memory that, whenever she submitted the petition, someone told her that it was "kind of late" to apply because there was not enough time for the FBI to conduct its background check.

[98] Tony Rodham Document Production 000025 (Attachment C to Pardon Application of Fernando Fuentes Coba) (Exhibit 25).

[99] Tony Rodham Document Production 000023 (Attachment C to Pardon Application of Fernando Fuentes Coba) (Exhibit 25).

[100] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).

[101] Vivian Mannerud Document Production (Letter from Roger Adams, Pardon Attorney, Department of Justice, to Lonnie Anne Pera, Counsel to Vivian Mannerud, Zuckert Scoutt & Rasenberger (Nov. 7, 2000)) (Exhibit 28).

Marc Rich and Pincus Green case. Clearly, the policy expressed by Roger Adams in the Fuentes case should have applied equally in the Marc Rich case. In the Rich case, of course, the White House considered and granted the Rich and Green pardons contrary to Justice Department policy. Moreover, the Deputy Attorney General, Eric Holder, expressed his support for the pardons despite the express contrary policy of his own Department. The fact that Fuentes' petition was summarily rejected confirms that Jack Quinn was right in thinking that he needed to circumvent the Justice Department in order to obtain pardons for Marc Rich and Pincus Green. Fuentes' summary rejection by the Justice Department also leads one to speculate that Fernando Fuentes Coba and Vivian Mannerud might have been more successful if they had hired Tony Rodham to lobby for the pardon.

Despite the fact that the Justice Department declined to process her father's pardon petition, Mannerud gave the pardon petition to "a lot of people—anyone who could help make sure that the application wasn't just put on a pile."[102] Among the people to whom Mannerud gave copies of the petition was Joe Perez, a friend of Mannerud's in California, who, according to Mannerud, owns J. Perez & Associates, a travel services company.[103] Mannerud believed that Perez knew "one of the Clinton brothers—probably Roger Clinton, because he is in California too."[104] Ultimately, Mannerud understood that Perez was going to speak to "his contact" about her father's pardon petition.[105] But, in hindsight, Mannerud does not know whether Perez did so.[106] Mannerud also gave a copy of the petition to a friend named Joe Velazquez who, according to Mannerud, ran a Hispanic outreach program and had worked at the Clinton White House.[107] Mannerud does not know what, if anything, Velazquez did in support of her father's petition.[108]

C. Tony Rodham's Attempt to Become Involved in the Fuentes Clemency Effort

Tony Rodham became involved in the Fuentes matter in November 2000.[109] Mannerud was introduced to Rodham at the Mayflower Hotel by their mutual friend, Marilyn J. Parker.[110] Parker, like Mannerud, was a prominent Democratic contributor. Parker also was involved in business with Tony Rodham. Rodham invested in a Florida company called Environmental Energy Fuels, which has developed a reportedly environmentally-sensitive gaso-

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[102] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).
[103] *Id.*
[104] *Id.* In connection with its investigation of Roger Clinton, the Committee learned that Clinton was in business with Perez and a number of other individuals in Los Angeles who were in the business of arranging travel to Cuba.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id. But see* NARA Document Production (Draft of document entitled "Pending Clemency Matters" by Meredith Cabe, Associate Counsel to the President, the White House (Dec. 10, 2000)) (Exhibit 29) This document, which was retrieved from the work file of Deputy White House Counsel Bruce Lindsey, indicates that "Velazquez spoke to POTUS re: case." *Id.* at 3.
[109] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).
[110] *Id.*

line additive.[111] Well before the meeting at the Mayflower Hotel, Parker had offered Rodham, and Rodham accepted, an opportunity to obtain shares in that company.[112] In August 2001, Parker pleaded guilty to five felonies in connection with $145,000 she paid in bribes to Miami airport officials in return for $1.5 million in no-bid work at the airport.[113]

According to Parker, Mannerud initially spoke to her about her father's pardon matter during a trip in New York.[114] During that trip, which, according to Parker, occurred around September 2000, Mannerud talked about her father's age and deteriorating physical condition as well as his desire to return to the United States.[115] Parker offered to write a letter in support of his petition.[116] According to Parker, the gist of her letter was simply that she knew that Fuentes was aged and in ill health.[117] Parker had no opinion as to why Mannerud thought that, given her limited knowledge about the matter, her support would have been meaningful.[118] Parker initially characterized her role as being limited to drafting the letter.[119] However, she later conceded that she had also arranged and participated in a meeting between Tony Rodham and Vivian Mannerud.[120]

After discussing the pardon effort with Mannerud in New York, Parker decided that Tony Rodham might be able to assist Mannerud.[121] Therefore, she called Rodham, and he suggested that Parker and Mannerud meet him for a drink that afternoon in the Mayflower Hotel.[122] At the hotel, Rodham and Mannerud talked about her father's pardon petition.[123] According to Parker, the meeting lasted no more than an hour.[124] Mannerud and Rodham discussed why she was seeking a pardon for her father and what avenues Mannerud had pursued to date.[125] Rodham then told Mannerud that he could help her obtain the pardon for her father.[126] Rodham told Mannerud that he had previously helped two individuals obtain pardons and even brought a copy of their clemency petition with him to the meeting.[127] Rodham then told Mannerud that he would help her if she paid him.[128]

Mannerud asked Rodham what exactly he would do to help get the pardon.[129] Rodham explained that "it costs money," specifically

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[111] Lisa Getter, *Family Ties Put Rodham Brothers In Spotlight*, L.A. TIMES, Mar. 4, 2001, at A1.
[112] *Id.*
[113] Joseph Tanfani, *Case Could Bring More Prosecutions*, MIAMI HERALD, Aug. 4, 2001, at 20A.
[114] Telephone Interview with Marilyn J. Parker (Dec. 18, 2001).
[115] *Id.*
[116] *Id*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).
[126] *Id.*
[127] *Id.* Neither Parker nor Mannerud was able to specifically recall the names of the individuals mentioned by Rodham, although Mannerud did remember that they were "carnival people." This reference strongly suggests that Rodham mentioned the Gregorys' case to Mannerud. The petition that Rodham showed to Mannerud was so thick that Mannerud ultimately redrafted her father's petition.
[128] *Id.*
[129] *Id.*

$50,000, which would be paid to Rodham and then "go to an attorney" to work on the matter.[130] When Mannerud pressed Rodham for more details of how exactly he would help get the pardon, Rodham explained that he knew the Pardon Attorney, Roger Adams.[131] He stated that Adams was from Arkansas and that he had "known Adams forever."[132] Rodham then told Mannerud that "after the Administration, we're all out of jobs."[133] Mannerud understood that Rodham was referring to himself and Adams.[134] Rodham then told Mannerud he would hire a law firm to prepare her father's pardon petition and Roger Adams' wife was associated with this law firm.[135] When Mannerud asked if he could guarantee that her father would be pardoned, Rodham demurred.[136] Mannerud then told Rodham that she had had "her share of scandals" and wanted no part of Rodham's proposal.[137]

Mannerud's account of the Mayflower meeting with Rodham is corroborated in large part by Marilyn Parker. Parker does not recall a number of details of the meeting and attributes her poor memory to the fact that Rodham and Mannerud did most of the talking at the meeting.[138] However, she confirms that Rodham explored with Mannerud "whether there was any way they could work together" on the pardon matter.[139] She also confirms that Rodham mentioned his previous work on a pardon matter.[140] Parker also confirms that Rodham mentioned he knew a person handling the pardons, a law firm that worked with DOJ on pardons, and that a wife of a Justice Department official worked at the law firm.[141] Parker also believes that it was possible that Rodham "expressed his desire to be paid" for his work on the Fuentes matter but could not recall whether Rodham specifically sought $50,000.[142]

According to Mannerud, in December 2000, about a month after the first meeting, Marilyn Parker called her about the possibility of Rodham helping her with the effort to obtain a pardon for Fuentes.[143] Parker told Mannerud that Rodham had lowered his asking price and wanted only $30,000.[144] Mannerud asked once again if there were any guarantees, to which Parker responded that there were not.[145] Parker asked Mannerud to consider the offer, emphasizing her father's poor health.[146] Ultimately, Mannerud told Parker in strong terms that she did not want to be involved in such an arrangement with Rodham.[147] After that discussion, Mannerud had no further discussions about the clemency

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[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] Telephone Interview with Marilyn J. Parker (Dec. 18, 2001).
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*

matter with either Parker or Rodham.[148] Mannerud continued her efforts to obtain a pardon for her father but was unsuccessful.

Parker denies Mannerud's account of this subsequent telephone call. According to Parker, Rodham simply asked her whether she had spoken to Mannerud "about her father."[149] As for a subsequent conversation with Mannerud, Parker remembered only having asked Mannerud how the pardon effort was going and that Mannerud became upset.[150] Parker flatly denied having approached Mannerud on Rodham's behalf with a reduced offer of $30,000 for services relating to Fuentes' pardon proceedings.[151]

D. Tony Rodham's Representations to Mannerud Were Fraudulent

Tony Rodham's activities in the Fuentes case go beyond an attempt by Rodham to sell his political access for $50,000. Rather, Rodham's actions were a potentially criminal attempt to defraud Vivian Mannerud of $50,000 by making serious misrepresentations to her about the actions he would take to help her. Almost all of the statements made by Rodham to Mannerud in the course of his efforts to be hired by Mannerud were false. Tony Rodham does not know Roger Adams or his wife.[152] In fact, Adams has never met Tony or Hugh Rodham. Adams is not from Arkansas and has been to Arkansas only once in his life, in the 1970s.[153] Adams' wife does not work for a law firm at all, let alone one that handles pardon matters.[154] In fact, Adams' wife is not even an attorney.[155] When Committee staff informed Mannerud that Rodham in fact had no relationship with Adams, she stated that she was "shocked" because Rodham left no doubt that he was close with Adams and that he intended to use that relationship to obtain the pardon for Fuentes.[156]

There are several questions about Tony Rodham's actions in this case. First, what is Rodham's response to Mannerud's charges? Second, what was Rodham's motivation for making these false representations to Mannerud? Third, were the actions taken by Rodham and Marilyn Parker criminal?

Due to Rodham's refusal to participate in an interview, the Committee has not been able to determine Rodham's response to these charges. However, in the absence of Rodham's cooperation, it still appears that there is substantial corroboration for Mannerud's account. First, Marilyn Parker recalls a number of key details from the first meeting at the Mayflower Hotel. Second, Tony Rodham had in his possession a copy of Fernando Fuentes Coba's pardon petition. Third, Mannerud has provided the Committee with a detailed and credible account.

It is difficult to divine Tony Rodham's motivation for making these false representations to Vivian Mannerud. It is possible that Rodham was concerned about the appearance of impropriety if he

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] Telephone Interview with Roger Adams (Sept. 4, 2001).
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] Telephone Interview with Vivian Mannerud (Aug. 28, 2001).

asked for $50,000 to lobby his sister or brother-in-law for a pardon, especially considering the fact that he was not an attorney. To address this concern, Rodham may have concocted a cover story that he needed the $50,000 to hire a law firm which was close to Roger Adams when in reality no such firm existed and Rodham was going to keep the $50,000 for himself.

The final, and most important, question is whether the actions taken by Tony Rodham or Marilyn Parker were criminal. It is certainly possible that Rodham and Parker engaged in a conspiracy to defraud Mannerud. Clearly, Mannerud ended up rejecting the overtures from Rodham and Parker and was never defrauded of any funds. However, the actions by Rodham and Parker may have amounted to a criminal conspiracy.[157] The Committee does not have sufficient evidence at this point to conclude that criminal conduct took place but strongly recommends that the Department of Justice examine this case and obtain sworn testimony from all of the relevant actors.

[Exhibits referred to follow:]

[157] Based on the information currently available to the Committee, it appears that Tony Rodham and Marilyn J. Parker might be criminally liable for conspiracy under 18 U.S.C. § 371 or 18 U.S.C. § 1343 (wire fraud). Liability as to Rodham and Parker under those statutes turns on the extent to which Rodham and Parker devised or intended to devise a scheme to defraud Mannerud and whether the telephone call by Parker to Mannerud was made interstate and in furtherance of the underlying scheme. If Parker did not conspire with Rodham to defraud Mannerud, it appears that liability as to Parker turns on whether she knowingly and willingly participated in Rodham's fraud scheme. *See, e.g., U.S. v. Maxwell*, 920 F.2d 1028 (C.A.D.C. 1990).


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Magazine
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Florida State Fair's Midway
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Showmanship
Entertainment
Food
Family Fun
Memories



E.A. (Ed) and Vonna Jo Gregory, senior officers of United Shows of America, Inc. on their 40th wedding anniversary in June 1997, on the stage of the world-famous Grand Ole Opry

United Shows of America, Inc., a traveling amusement company based in the suburbs of Nashville, Tennessee, is returning to the Florida State Fair for the seventh straight year. This year, honored by being contracted by the fair's officials, United is ready to work harder as the newly selected general contractor for the spectacular 80-ride midway.

Ed and Vonna Jo Gregory, of Brentwood, Tennessee, who along with their family, own and operate United Shows of America, produce and play approximately 30 fairs annually. Each year United's season begins the first week in January, where the show has opened each season for the past 18 years at the South Florida Fair in West Palm Beach and continues through the second week in November, where the show closes each season at the Volusia County Fair in DeLand, Florida. The Gregorys see their selection as general contractor by the Florida State Fair Authority to play the 1998 Florida State Fair as an opportunity to bring to the state fair the finest show traveling on the road today. The company has an excellent reputation of bringing to fair patrons an exciting variety of safe and fun-filled amusement rides, providing the best in family entertainment to the state's premier fair.

United Shows produces fairs in Florida, Georgia, Alabama, Kentucky, Tennessee, Illinois, Missouri, Indiana and Mississippi.

The day-to-day operations of the giant road show are capably managed by Donald L. Gregory, president of the corporation, along with his wife, Jackie, who assists in the office. The Gregorys' other children participate in various capacities with the show: Daniel Gregory, an attorney, Faith Gregory, manager of Jim Reeves Museum, Inc. and Faron Young Enterprises, subsidiaries of United Shows of America, Inc., and Jodi Gregory, a senior at Emory School of Nursing. The Gregorys have four grandchildren, ages 2 to 15.

Attendance on the State Fair midway this year is expected to exceed 500,000 patrons at the 12-day event.

Included in United's arsenal of rides, games of skill, food stands and entertainers are several new 1998 rides, which will be debuting at this year's State Fair, including the spectacular Italian-built Super Twister, the Heliport, Tea Cups, Safari Jeeps, Ocean Trip, Whirlwind and more. United is known throughout the industry for providing the latest innovative, high-capacity rides at fairs it plays.

United Shows brings approximately 800 people in different capacities, including executive managers, computer operators, accountants, engineers, secretaries, ticket sellers, cooks, mechanics, electricians, ride specialists, safety technicians, concession operators and others to the fair when it begins to arrive in town on Thursday, January 29, to prepare for the Thursday, February 5, opening of the fair. Included in this grand array of equipment are approximately 80 amusement rides, 75 games of skill, 50 food concessions, 20 generators, 25 ticket boxes, 75 personal living quarters and bunkhouse trailers, side shows and other attractions. To move this equipment from city to city takes approximately 300 trucks of various sizes.

General Manager Michael C. Mason says that when United comes to a city the size of Tampa for an event as large as the State Fair, United is beneficial to the economy, spending hundreds of thousands of dollars with local suppliers and merchants. Mason estimates diesel fuel alone, bought from a local oil company to run the giant United generators, will exceed $50,000 at this year's fair. Other benefactors of United's projected purchases in the community include hotels, motels, restaurants, groceries, parts, houses, taxis, airlines, tire companies, truck repair shops, sound companies, florists, barber and beauty shops, medical facilities, post offices, overnigh: mail dispatchers, legal, temporary employees, laundries, dry cleaners, advertising agencies, meat companies, soft drink bottlers, general merchandise stores and advertising agencies.

United President Don Gregory said he is extremely proud to present United Shows of America, Inc. at this year's State Fair and is very thankful to Agriculture Commissioner Bob Crawford, Assistant Agriculture Commissioner Ann Wainwright, Chairman George Steinbrenner, all Florida State Fair Authority members and Executive Director Rick Vymlatil for placing the confidence in his organization by allowing United Shows of America, Inc. to serve Florida's number one fair.


The Horned Serpent
1998 Midway by United Shows of America, Inc. — Nashville, TN

Giant Country Music Show at 1998 Florida State Fair

At each annual Florida State Fair since 1992, Gregory Entertainment Corporation of Nashville has produced and co-sponsored a giant, spectacular country music show.

This year, on Thursday, February 12, more than 20 members of the world-famous Grand Ole Opry will appear in person for three shows. Ten of the stars will appear at an 11 a.m. show, 10 of the stars will appear at a 2 p.m. show and all 20-plus stars will appear in a grand finale show at 7 p.m.

Some of the stars scheduled to appear are: Jim Ed Brown and Helen Cornelius, Little Jimmy Dickens, Kitty Wells, Bill Anderson, Skeeter Davis, Jeannie Pruitt, Billy Walker, Freddie Hart, Connie Smith, The Whites, Jan Howard, Jeannie Seely, Jean Shephard, Ken Mellons, Johnny Russell, Davis Frizzell, Tommy Cash and Jett Williams.

This will be one of the largest shows of country music gathered at one time for a single performance in the history of country music.



PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

Please read accompanying instructions carefully before beginning. Typewrite or print the answers in ink. Each question must be answered fully, truthfully, and accurately. If the space for any answer is insufficient, petitioner may complete answer on a separate sheet of paper and attach it to the petition. Submission of material, false information is punishable by imprisonment of up to five years and a fine of not more than $250,000. 18 U.S.C. §§ 1001 and 3571.

TO THE PRESIDENT OF THE UNITED STATES:

The undersigned petitioner prays for a pardon and in support thereof states as follows:

1. Full name: Vonna (First) Jo (Middle) Gregory (Last)

Address: [redacted] (Number, Street) [redacted] (City) TN (State) [redacted] (Zip Code)

Telephone Number (include area code): [redacted]

Social Security No.: [redacted] Date and place of birth: [redacted]

Sex: F Height: 5'2" Weight: 118# Hair Color: Brunette Eye Color: Hazel

Are you a United States citizen? ☒ yes ☐ no If not, state nationality and give alien registration number: N/A. If naturalized U.S. citizen, furnish date and place of naturalization: N/A

State in full every other name by which you have been known, including name under which you were convicted, the reason for the use of another name, and the dates during which you were so known (for example, include your maiden name, name(s) by a former marriage(s), alias(es), and nickname(s)).

Vonna Jo Meisner (maiden name)

Offense(s) For Which Pardon Is Sought

2. Petitioner was convicted on a plea of guilty (guilty, not guilty, nolo contendere) in the United States District Court for the Southern (Northern, Western, etc.) District of Alabama (identify state) of the crime of:

Bank charges as the law applied to controlling stockholders of a bank. (Describe specific offense)

and was sentenced on October 1, 1986 to ☐ imprisonment for N/A,

☒ probation for 3 years, ☐ a fine of $ N/A, and/or ☐ restitution of $ N/A.

Petitioner was 37 years of age when the offense was committed. (1976)

3. Petitioner began service of the sentence of ☐ imprisonment ☒ probation on Oct. 1, 1986; was released on Sept. 30 1989 from N/A (Federal institution); and was finally discharged by expiration of sentence on N/A, 19___. Petitioner ☒ did ☐ did not appeal the conviction. (Please see explanation)

Indicate the date(s) on which the fine, restitution or special assessment was paid. If the fine, restitution, or assessment have not been paid in full, explain why. If appealed, please provide the date of decision(s) by the Court of Appeals and, if applicable, the Supreme Court. Please also provide citations to any published judicial opinion(s) or a copy of unpublished opinion(s). (An optional continuation page is provided.)

Case #83-00225 Numbers 82-7145 through 82-7152

Re: United States Court of Appeals, 11th Circuit (attached for convenience)

EXHIBIT 2

4. Give a complete and detailed account of petitioner's offense(s), including dates (or time span) of the offense, names of codefendants and, when applicable, amount of money involved. Petitioner is expected to describe the factual basis of her/his offense completely and accurately and not rely on criminal code citations or name references only. If the conviction resulted from a plea agreement, petitioner should describe fully the extent of her/his total involvement in the criminal transaction(s), in addition to the charge(s) to which she/he pled guilty.

Originally, petitioner, with petitioner's husband, owned controlling interest in five small Alabama banks. Petitioner sold the controlling interest and all their stock in Wilcox County Bank, Camden, AL (bank subject of indictment and conviction) to Mark Lyons, III. Mark Lyons III, sometime over a year after purchasing the bank stock from petitioner, in our opinion, by his management and control of the bank, caused the bank to fail. After many preliminary attempts to indict us in various jurisdictions, where we owned and/or controlled other financial institutions, which included Macon County, AL, who indicted the petitioner and petitioner's husband in 1978 on state banking charges, which was subsequently dismissed. The case was then referred to the Middle District of Alabama (Montgomery), who refused to indict. In the meantime, the local District Attorney (Jimmy Evans) indicted petitioner for allowing Melba Till Allen (now deceased, the then State Treasurer of Alabama) to fly on an airplane owned by petitioner and her husband. That indictment was dismissed. Then in 1980, the indictment in the Southern District of Alabama was handed down and dismissed. The second indictment (actually the fourth) was returned and we prepared for trial. After the conviction, the trial judge (Honoralbe Robert E. Varner) told us on the record that we had a very appealable case and suggested we go to the Appeals Court. We did (copy enclosed). When the attorneys for the government offered our attorney a plea agreement in 1986, which would terminate the proceedings that had been ongoing since 1976 (when offense occurred), eight years after the first indictments in 1978 (dismissed), two and one-half years since the appellate court ruled (April 1984), and hundreds of thousands of dollars in legal fees, we voluntarily agreed to the plea bargain, accepted our sentence, served our probation as set out in the documents attached hereto as an exhibit for reference.

We went on to rebuild our lives, no excuses, always when anyone asked, giving a full, candid disclosure and accepting full responsibility for our past problems. In our plea bargain, we accepted the verdicts of the jury, the punishment of the court, was then and are now sincerely sorry for all problems and inconvenience we caused anyone in any capacity and respectfully ask you, Mr. President, to forgive us and grant this pardon.

Prior and Subsequent Criminal Record

5. Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority, whether federal, state, local or foreign, either as a juvenile or adult for any incident, aside from the offense for which pardon is sought? ☒ yes ☐ no

For each incident list date, nature of charge, factual circumstances, law enforcement authority involved, location, and disposition. You must list every violation, including traffic violations that resulted in an arrest or criminal charge, for example, driving under the influence. Any omission will be considered a falsification. (An optional continuation page is provided if necessary.)

(1) In April of 1978, we were indicted in Macon County, Tuskegee, AL on bank fraud charges, which were dismissed in or about September of 1978.

(2) In or about September of 1978, petitioner was indicted in Montgomery County, in Montgomery, Alabama, for furnishing our airplane to then Alabama State Treasurer, Melba Till Allen (now deceased) to go on a trip somewhere (I don't remember where), which was later dismissed.

(3) In 1980, petitioner was indicted in the Southern District of Alabama, Mobile, Alabama, on bank charges, which was dismissed.

AT NO TIME WERE WE PHYSICALLY ARRESTED AND HELD. WHEN WE WERE NOTIFIED OF THE INDICTMENTS, WE VOLUNTARILY APPEARED, SIGNED OUR BONDS, AND COMMENCED WORKING ON OUR DEFENSE.

Biographical Information

6. Current marital status: ☐ Never Married ☒ Married ☐ Divorced ☐ Widowed ☐ Separated
For each marriage give the following: name of spouse, date and place of spouse's birth, date and place of marriage, and, if applicable, date and place of divorce, and current or last known address and telephone number of each former spouse:

Edgar Allen Gregory, Jr. [redacted] San Diego, CA
name of spouse *date/place of birth*

[redacted]
full address including Zip code *telephone number, including area code*

[redacted]
date/place of marriage *date/place of divorce*

SEE EXHIBITS TO QUESTION 6 ATTACHED HERETO.

name of spouse *date/place of birth*

full address including Zip code *telephone number, including area code*

date/place of marriage *date/place of divorce*

7. List your children by name and furnish date and place of birth for each:
(If you do not have custody of any minor children, indicate whether you pay child support.)

Faith A. Gregory [redacted] Oceola, Arkansas
name of child *date/place of birth*

Daniel A. Gregory [redacted] Kansas City, Kansas
name of child *date/place of birth*

Donald L. Gregory [redacted] Manhattan, Kansas
name of child *date/place of birth*

Jodi L. Gregory [redacted] Wichita, Kansas
(Legally adopted. We never lived in Wichita, Kansas)

8. List the complete address of all schools you have attended since your conviction, beginning with the most recent and working backward. Indicate the type of degree/diploma received and give the name of an instructor, counselor, or other school official who knew you well. (An optional continuation page is provided if necessary.)

School NONE	*From (month/year)*	*To (month/year)*
Number and Street	*Degree*	*Month/year awarded*
City	*State*	*Zip Code*
Name of school official	*Telephone number of school official*	

Residences

9. List every place you have lived since the conviction, beginning with the present and working back. *(All periods must be accounted for below.)* List the physical location of your residence; do not use a post office box as an address. If you lived in an apartment complex, list your apartment number. (An optional continuation page is provided if necessary.)

Date you moved to your present address (month/year): [redacted]	*Number and Street* [redacted]		*Apartment Number* [redacted]
	City [redacted]	*State* [redacted]	*Zip Code* [redacted]

From (month/year): [redacted]	*Number and Street* [redacted]		*Apartment Number* [redacted]
To (month/year): [redacted]	*City* [redacted]	*State* [redacted]	*Zip Code* [redacted]

Fr... (month/... [redacted]	*N...ber and Street* [redacted]		*Apartment Number* [redacted]
To (month/year): [redacted]	*City* [redacted]	*State* [redacted]	*Zip Code* [redacted]

[redacted]

Employment History

10. List all periods of employment and unemployment since the conviction, beginning with the present and working backward. List all full and part-time work, self-employment, and periods of unemployment. For each period of unemployment, indicate your means of support. (An optional continuation page is provided.)

Present Employer: United Shows of America, Inc.			Telephone (include area code): (615) 776-5656
Date you began this employment (month/year): July 1982	Number and Street: 2011 Johnson Industrial Blvd., P.O. Box 1089		
Type of business: Amusement	City: Nolensville	State: TN	Zip Code: 37135
	Position: Senior Vice President	Supervisor	Supervisor's telephone number

Employer: N/A			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer: N/A			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

(a) Since the conviction, have you been fired or left a job following allegations of misconduct or unsatisfactory job performance? ☐ yes ☒ no

(b) Have you failed to list the conviction, or any other arrest or conviction, on any employment or other application where requested to list such information? ☐ yes ☒ no

If you answered yes to either of the above questions, explain fully below. An optional continuation page is provided.

Substance Abuse and Mental Health Information

11. (a) Have you ever used any illegal drug or abused prescription drugs or alcohol? ☐ yes ☒ no
If you answered yes, on a separate sheet identify the drugs used, the dates of use, and the frequency of use.

(b) Have you ever been involved in the illegal sale or distribution of drugs? ☐ yes ☒ no
If you answered yes, on a separate sheet provide complete details and dates of your involvement.

(c) Have you ever sought or participated in counseling, treatment, or a rehabilitation program for drug use or alcohol abuse? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment or counseling, and provide the name, full address, and telephone number of the treatment facility and of the doctor, counselor or other treatment provider.

(d) Have you ever consulted with a mental health professional (psychiatrist, psychologist, or counselor) or with another health care provider concerning a mental health-related condition? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment and the name, full address, and telephone number of the counselor/treatment provider.

Civil and Financial Information

12. (a) Are you in default or delinquent in any way in the performance or discharge of any debt or obligation imposed upon you? ☐ yes ☒ no

(b) Since the conviction, have any liens (including federal or state tax liens) or any lawsuits been filed against you, or have you filed for discharge of your debts in bankruptcy?
IRS inadvertently filed a lien against us in . This was ☒ yes ☐ no
for payroll taxes in a company we sold in 1976, where we were stockholders,
but not employees. IRS released in . Copy of certified release
attached.

(c) Do you have pending any judicial or administrative proceedings with the federal, state, or local governments? ☐ yes ☒ no

If you answered yes to any question, explain fully on the optional continuation page.

Military Record

13. (a) Have you ever served in the armed forces of the United States? ☐ yes ☒ no

Dates of service: N/A Branch(es): N/A

Serial numbers: N/A Type of discharge: N/A

Decorations (if any): N/A

If other than honorably discharged, specify type and circumstances surrounding your release(s) (use optional continuation page) and attach copy of your separation papers (Form DD-214.

(b) While serving in the armed forces, were you the recipient of non-judicial punishment or the defendant in any court-martial? N/A ☐ yes ☐ no

If yes, state fully the nature of the charge, relevant facts, disposition of the proceedings, the date thereof, and the name and address of the authority in possession of the records thereof. If you were convicted of an offense by court-martial, provide a copy of the court-martial promulgating order and on a separate sheet provide the same information with respect to each conviction that is required in questions 2 through 4 of this application.

N/A

Civil Rights and Occupational Licensing

14. Have you ever been granted or denied restoration of your civil rights (for example, a state pardon, a certification of restoration of civil rights, or a certificate of discharge)? ☐ yes ☒ no
Attach a copy of the document(s) evidencing the state's action.

15. Have you ever been granted or denied removal of your federal or state firearms disabilities?
Attach a copy of the document(s) evidencing the federal or state action. ☐ yes ☒ no

16. Since the conviction, have you been granted or denied any type of business or professional license, including the reinstatement of any licenses that were revoked or denied, in which your conviction was a consideration? ☐ yes ☒ no

If yes, attach a copy of the document(s) evidencing the action, including any explanation of the reasons for such action. If not available, provide the name, full address, and telephone number of the relevant authority taking the action, the nature of the license, the disposition of your request, and the date of the disposition. Use optional continuation page if necessary.

Reasons for Seeking Pardon

17. State your reasons for seeking a pardon. Please refer to paragraphs 4 and 11 in the attached Information and Instructions on Pardons. (As pointed out in paragraph 10 of the attached instructions, a pardon is a sign of forgiveness. Accordingly, in the usual request for pardon you should not reargue your case, assert innocence, or otherwise attack the validity of your conviction.)

I am sincerely sorry for this part of my life. For whatever time I've got left, I would like to know my country, through our President, has forgiven me and granted a pardon. As far as honesty to reasons, I really just want to put this behind me and know a pardon was granted. We have and do admit our faults in this case, have worked very hard to rebuild our lives, be good parents, grandparents, employers and friends.

Certification and Personal Oath

I hereby certify that all answers to the above questions and all statements contained herein are true, and I understand that any misstatements of material facts contained in this petition may cause adverse action on my petition for pardon, in addition to subjecting me to any other penalties provided by law.

In petitioning the President of the United States for pardon, I do solemnly swear that I will be law-abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

Respectfully submitted this 10 day of Nov, 1998.

Vonna Jo Gregory
(signature of petitioner)

Subscribed and sworn to before me this 10 day of Nov, 1998.

NOTARY PUBLIC
My Comm Exp. 1/31/2000
Bonded By Service Ins
No. CC594378
Personally Known ( ) Other ID

Notary Public

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I authorize any investigator, special agent, or other duly accredited representative of the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, criminal history, arrest, conviction, medical, psychiatric/psychological, health care, and financial and credit information.

I understand that, for financial or lending institutions and certain other sources of information, a separate specific release may be needed (pursuant to their request or as may be required by law), and I may be contacted for such a release at a later date.

I further authorize the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my suitability for a government benefit.

I authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this form, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for three (3) years from the date signed.

Signature (Sign in ink) Vonna Jo Gregory		
Full Name (type or print legibly) Vonna Jo Gregory		*Date Signed* 11-10-98
Other Names Used		
Street Address [redacted]		
City [redacted]	*State* [redacted]	*ZIP Code* [redacted]
Home Telephone Number (include area code) [redacted]	*Social Security Number* [redacted]	

May 1996

98 11 0113

PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

Please read accompanying instructions carefully before beginning. Typewrite or print the answers in ink. Each question must be answered fully, truthfully, and accurately. If the space for any answer is insufficient, petitioner may complete answer on a separate sheet of paper and attach it to the petition. Submission of material, false information is punishable by imprisonment of up to five years and a fine of not more than $250,000. 18 U.S.C. §§ 1001 and 3571.

TO THE PRESIDENT OF THE UNITED STATES: NOV 30 1998

The undersigned petitioner prays for a pardon and in support thereof states as follows:

1. Full name: Edgar (First) Allen (Middle) Gregory, Jr. (Last)

Address: [redacted] (Number, Street, City, State, Zip Code)

Telephone Number (include area code): [redacted]

Social Security No. [redacted] Date and place of birth: [redacted]

Sex: M Height: 5'8" Weight: 180 lb Hair Color: Gray Eye Color: Blue

Are you a United States citizen? ☒ yes ☐ no If not, state nationality and give alien registration number: N/A. If naturalized U.S. citizen, furnish date and place of naturalization: N/A

State in full every other name by which you have been known, including name under which you were convicted, the reason for the use of another name, and the dates during which you were so known (for example, include your maiden name, name(s) by a former marriage(s), aliases(s), and nickname(s)).

E. A. Gregory (Dr. Edgar Allen Gregory of my life)

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PARDON ATTORNEY 98 NOV 30 RECEIVED DEPT OF JUSTICE

Offense(s) For Which Pardon Is Sought

2. Petitioner was convicted on a plea of guilty (guilty, not guilty, nolo contendere) in the United States District Court for the Southern (Northern, Western, etc.) District of Alabama (Identify state) of the crime of:

Bank charges as the law applied to controlling stockholders of a bank. (Describe specific offense)

and was sentenced on October 1, 1986 to ☐ imprisonment for N/A, ☒ probation for 5 years, ☐ a fine of $ N/A, and/or ☐ restitution of $ N/A.

Petitioner was 38 years of age when the offense was committed. (1976)

3. Petitioner began service of the sentence of ☐ imprisonment ☒ probation on Oct. 1, 1986; was released on Oct. 1, 1990 from N/A (Federal institution); and was finally discharged by expiration of sentence on N/A, 19__. Petitioner ☒ did ☐ did not appeal the conviction. (Please see explanation)

Indicate the date(s) on which the fine, restitution or special assessment was paid. If the fine, restitution, or assessment have not been paid in full, explain why. If appealed, please provide the date of decision(s) by the Court of Appeals and, if applicable, the Supreme Court. Please also provide citations to any published judicial opinion(s) or a copy of unpublished opinion(s). (An optional continuation page is provided.)

Case #80-00025 Numbers 82-7145 through 82-7152

Re: United States Court of Appeals, 11th Circuit (attac

EXHIBIT 3

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

4. Give a complete and detailed account of petitioner's offense(s), including dates (or time span) of the offense, names of codefendants and, when applicable, amount of money involved. Petitioner is expected to describe the factual basis of her/his offense completely and accurately and not rely on criminal code citations or name references only. If the conviction resulted from a plea agreement, petitioner should describe fully the extent of her/his total involvement in the criminal transaction(s), in addition to the charge(s) to which she/he pled guilty.

Originally, petitioner, with petitioner's wife, owned controlling interest in five small Alabama banks. Petitioner sold the controlling interest and all their stock in Wilcox County Bank, Camden, AL (Bank subject of indictment and conviction) to Mark Lyons, III. Mark Lyons III, sometime over a year after purchasing the bank stock from petitioner, in our opinion, by his management and control of the bank, caused the bank to fail. After many preliminary attempts to indict us in various jurisdictions where we owned and/or controlled other financial institutions, which included Macon County, AL, who indicted the petitioner and petitioner's wife in 1978 on state banking charges, which was subsequently dismissed. The case was then referred to the Middle District of Alabama (Montgomery), who refused to indict. In the meantime, the local District Attorney (Jimmy Evans) indicted petitioner for allowing Melba Till Allen (now deceased, the then State Treasurer of Alabama) to fly on an airplane owned by petitioner and his wife. That indictment was dismissed. Then in 1980, the indictment in the Southern District of Alabama was handed down and dismissed. The second indictment (actually the fourth) was returned and we prepared for trial. After the conviction, the trial judge (Honorable Robert E. Varner) told us on the record that we had a very arguable case, and suggested we go to the Appeals Court. We did (convicted) and the attorneys for the government offered our attorneys a plea agreement in 1986, which would terminate the proceedings that had been ongoing since 1976 (when offense occurred), [illegible] after the first indictments in 1978 (dismissed), [illegible] since the appellate court ruled (April 1987) [illegible] thousands of dollars in legal fees, we voluntarily entered [illegible] plea bargain, accepted our sentence, served our probation, [illegible] the documents attached hereto as an exhibit for reference.

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We went on to rebuild our lives, no excuses, always when anyone asked, giving a full, candid disclosure and accepting full responsibility for our past problems. In our plea bargain, we accepted the verdicts of the jury, the punishment of the court, was then and are now sincerely sorry for all problems and inconvenience we caused anyone in any capacity and respectfully ask you, Mr. President, to forgive us and grant this pardon.

Prior and Subsequent Criminal Record

5. Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority, whether federal, state, local or foreign, either as a juvenile or adult for any incident, aside from the offense for which pardon is sought? ☒ yes ☐ no

For each incident list date, nature of charge, factual circumstances, law enforcement authority involved, location, and disposition. You must list every violation, including traffic violations that resulted in an arrest or criminal charge; for example, driving under the influence. Any omission will be considered a falsification. (An optional continuation page is provided if necessary.)

(1) In approximately 1953, I ran away from my stepmother's home at age 16 and joined the Air Force. Police picked up the friend I ran away with and me in Baton Rouge, LA and returned us to my stepmother's house in Pensacola, FL.

(2) I think I wrote three insufficient checks for $20.00 in Franklin County, Missouri in 1957. I made restitution and they released me back to the Navy in August of 1957.

If I've missed anything prior to reaching the age of 20, I apologize. I think this is all the illegal things I did in my youth.

(3) In April of 1978, we were indicted in Macon County, Tuskegee, AL on bank fraud charges, which were dismissed in or about September of 1978.

Optional Continuation Page for
Petition for Pardon After Completion of Sentence

Answers to Other Questions

Question # *Response:*

5. (4) In or about September of 1978, petitioner was indicted in Montgomery County, in Montgomery, AL, for furnishing our airplane to then Alabama State Treasurer, Melba Till Allen (now deceased) to go on a trip somewhere (I don't remember where), which was later dismissed.

(5) In 1980, petitioner was indicted in the Southern District of Alabama, Mobile, Alabama, on bank charges, which was dismissed.

AT NO TIME WERE WE PHYSICALLY ARRESTED AND HELD (ITEMS 3-5). WHEN WE WERE NOTIFIED OF THE INDICTMENTS, WE VOLUNTARILY APPEARED, SIGNED OUR BONDS, AND COMMENCED WORKING ON OUR DEFENSE.

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Biographical Information

6. Current marital status: ☐ Never Married ☒ Married ☐ Divorced ☐ Widowed ☐ Separated

For each marriage give the following: name of spouse, date and place of spouse's birth, date and place of marriage, and, if applicable, date and place of divorce, and current or last known address and telephone number of each former spouse:

[redacted]

name of spouse *date/place of birth*

[redacted]

full address including Zip code *telephone number, including area code*

[redacted] [redacted]

date/place of marriage *date/place of divorce*

SEE EXHIBITS TO QUESTION 6 ATTACHED HERETO.

Deleted with permission of DAK

7. *(If you do not have custody of any minor children, indicate whether you pay child support.)*

Faith A. Gregory	[redacted]	Oceola, Arkansas 11-10-98
name of child	*date/place of birth*	
Daniel A. Gregory	[redacted]	Kansas City, Kansas
name of child	*date/place of birth*	
Donald L. Gregory	[redacted]	Manhattan, Kansas
name of child	*date/place of birth*	
Jodi L. Gregory	[redacted]	Wichita, Kansas
(Legally adopted. Wrongfully lived in Wichita, Kansas)		

8. List the complete address of all schools you have attended since your conviction, beginning with the most recent and working back. Indicate the type of degree/diploma received and give the name of an instructor, counselor, or other school official who knew you well. (An optional continuation page is provided if necessary.)

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School NONE	*From (month/year)*	*To (month/year)*
Number and street	*Degree*	*Month/year awarded*
City	*State*	*Zip Code*
Name of school official	*Telephone number of school official*	

Residences

9. List every place you have lived since the conviction, beginning with the present and working back. *(All periods must be accounted for below.)* List the physical location of your residence; do not use a post office box as an address. If you lived in an apartment complex, list your apartment number. (An optional continuation page is provided if necessary.)

Date you moved to present address (month/year): [redacted]	*Number and Street* [redacted]		*Apartment Number* [redacted]
	City [redacted]	*State* [redacted]	*Zip Code* [redacted]

From (month/year): [redacted]	*Number and Street* [redacted]		*Apartment Number* [redacted]
To (month/year): [redacted]	*City* [redacted]	*State* [redacted]	*Zip Code* [redacted]

***

From (month/year): [redacted]	*Number and Street* [redacted]		*Apartment Number* [redacted]
To (month/year): [redacted]	*City* [redacted]	*State* [redacted]	*Zip Code* [redacted]

[redacted]

Employment History

10. List all periods of employment and unemployment since the conviction, beginning with the present and working backward. List all full and part-time work, self-employment, and periods of unemployment. For each period of unemployment, indicate your means of support. (An optional continuation page is provided.)

Present Employer: United Shows of America, Inc.			Telephone (include area code): 615-776-5656
Date you began this employment (month/year): July 1982	Number and Street: 2011 Johnson Industrial Blvd., P.O. Box 1089		
	City: Nolensville	State: TN	Zip Code: 37135
Type of business: Amusement	Position: Chairman	Supervisor: N/A	Supervisor's telephone number: N/A

Employer: N/A			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer: N/A			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

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(a) Since the conviction, have you been fired from a job following allegations of misconduct or unsatisfactory job performance? ☐ yes ☒ no

(b) Have you failed to list the conviction or any other arrest or conviction, on any employment or other application where required to list such information? ☐ yes ☒ no

If you answered yes to either of the above questions, explain fully below. An optional continuation page is provided.

N/A

Substance Abuse and Mental Health Information

11. (a) Have you ever used any illegal drug or abused prescription drugs or alcohol? ☐ yes ☒ no
If you answered yes, on a separate sheet identify the drugs used, the dates of use, and the frequency of use.

(b) Have you ever been involved in the illegal sale or distribution of drugs? ☐ yes ☒ no
If you answered yes, on a separate sheet provide complete details and dates of your involvement.

(c) Have you ever sought or participated in counseling, treatment, or a rehabilitation program for drug use or alcohol abuse? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment or counseling, and provide the name, full address, and telephone number of the treatment facility and of the doctor, counselor or other treatment provider.

(d) Have you ever consulted with a mental health professional (psychiatrist, psychologist, or counselor) or with another health care provider concerning a mental health-related condition? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment and the name, full address, and telephone number of the counselor/treatment provider.

Civil and Financial Information

12. (a) Are you in default or delinquent in any way in the performance or discharge of any debt or obligation imposed upon you? ☐ yes ☒ no

(b) Since the conviction, have any liens (including federal or state tax liens) or any lawsuits been filed against you, or have you filed for discharge of your debts in bankruptcy?
IRS inadvertently filed a lien against us in 1982 This was for payroll taxes in a company we sold in 1976, where we were stockholders, but not employees. IRS released in 1993. Copy of certified release attache ☒ yes ☐ no

(c) Do you have pending any judicial or administrative proceedings with the federal, state, or local governments? ☐ yes ☒ no

If you answered yes to any question, explain fully on the optional continuation page.

Military Record

13. (a) Have you ever served in the armed forces of the United States? ☒ yes ☐ no

Dates of service: Dec.1954 to Sept.1957 Branch(es): Navy

Serial numbers: 459-74-85 Type of discharge: General under honorable conditions

Decorations (if any): None

If other than honorably discharged, specify type and circumstances, including your release(s) (use optional continuation page) and attach copy of your separation papers (Form DD-214).

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(b) While serving in the armed forces, were you the recipient of non-judicial punishment or the defendant in any court-martial? ☒ yes ☐ no

If yes, state fully the nature of the charge or relevant facts, disposition of the proceedings, the date thereof, and the name and address of the authority in possession of the records thereof. If you were convicted of an offense by court-martial, provide a copy of the court-martial promulgating order and on a separate sheet provide the same information with respect to each conviction that is required in questions 2 through 4 of this application.

Discharged. No court martial. Just talked to commanding officer.

SEE EXHIBITS TO QUESTION 13(b) ATTACHED HERETO.

Civil Rights and Occupational Licensing

14. Have you ever been granted or denied restoration of your civil rights (for example, a state pardon, a certification of restoration of civil rights, or a certificate of discharge)? ☐ yes ☒ no
Attach a copy of the document(s) evidencing the state's action.

15. Have you ever been granted or denied removal of your federal or state firearms disabilities?
Attach a copy of the document(s) evidencing the federal or state action. ☐ yes ☒ no

16. Since the conviction, have you been granted or denied any type of business or professional license, including the reinstatement of any licenses that were revoked or denied, in which your conviction was a consideration? ☒ yes ☐ no

If yes, attach a copy of the document(s) evidencing the action, including any explanation of the reasons for such action. If not available, provide the name, full address, and telephone number of the relevant authority taking the action, the nature of the license, the disposition of your request, and the date of the disposition. Use optional continuation page if necessary.

Florida Department of Insurance, 200 E. Gaines St., Tallahassee, FL 32399-0300, Telephone: (850) 922-3100. Insurance agency license. Failed to renew because of conviction. December 1982.

Reasons for Seeking Pardon

17. State your reasons for seeking a pardon. Please refer to paragraphs 4 and 11 in the attached Information and Instructions on Pardons. (As pointed out in paragraph 10 of the attached instructions, a pardon is a sign of forgiveness. Accordingly, in the usual request for pardon you should not reargue your case, assert innocence, or otherwise attack the validity of your conviction.)

I am sincerely sorry for this part of my life. For whatever time I've got left, I would like to know my country, through our President, has forgiven me and granted a pardon. As far as honesty to reasons, I really just want to put this behind me and know a pardon was granted. We have and do admit our faults in this case, have worked very hard to rebuild our lives, be good parents, grandparents, employers and friends.

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Gregory

Certification and Personal Oath

I hereby certify that all answers to the above questions and all statements contained herein are true, and I understand that any misstatements of material facts contained in this petition may cause adverse action on my petition for pardon, in addition to subjecting me to any other penalties provided by law.

In petitioning the President of the United States for pardon, I do solemnly swear that I will be law-abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

Respectfully submitted this 10 day of NOV, 1998.

(signature of petitioner)

Subscribed and sworn to before me this 10 day of NOV, 1998.

NOTARY PUBLIC
My Comm Exp. 1/31/2000
Bonded By Service Ins
No. CC594379
Personally Known ( ) Other I.D.

Notary Public

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I authorize any investigator, special agent, or other duly accredited representative of the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, criminal history, arrest, conviction, medical, psychiatric/psychological, health care, and financial and credit information.

I understand that, for financial or lending institutions and certain other sources of information, a separate specific release may be needed (pursuant to their request or as may be required by law), and I may be contacted for such a release at a later date.

I further authorize the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my suitability for a government benefit.

I authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this form, and may be redisclosed to the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for three (3) years from the date signed.

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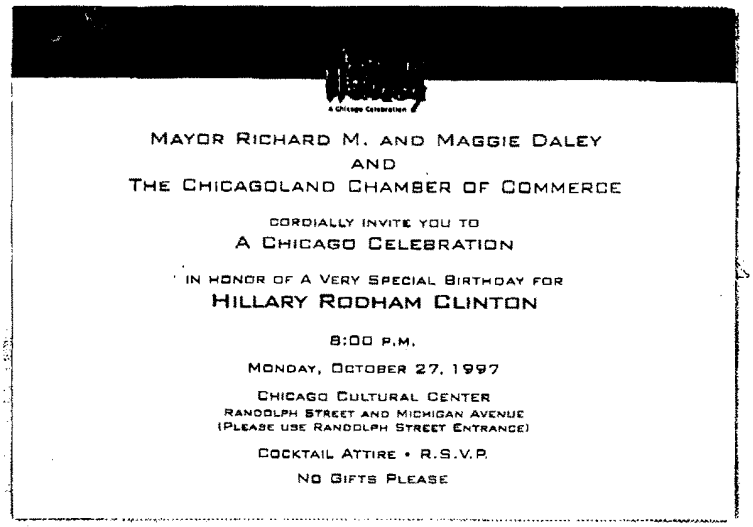
E. A. or Vonne Jo Gregory

Signature (sign in ink)		
Full Name (type or print legibly) Edgar Allen Gregory, Jr.		*Date Signed* 11-10-98
Other Names Used E. A. Gregory		
Street Address [redacted]		
City [redacted]	*State* [redacted]	*ZIP Code* [redacted]
Home Telephone Number (include area code) [redacted]	*Social Security Number* [redacted]	



MAYOR RICHARD M. AND MAGGIE DALEY
AND
THE CHICAGOLAND CHAMBER OF COMMERCE

CORDIALLY INVITE YOU TO
A CHICAGO CELEBRATION

IN HONOR OF A VERY SPECIAL BIRTHDAY FOR
HILLARY RODHAM CLINTON

8:00 P.M.

MONDAY, OCTOBER 27, 1997

CHICAGO CULTURAL CENTER
RANDOLPH STREET AND MICHIGAN AVENUE
(PLEASE USE RANDOLPH STREET ENTRANCE)

COCKTAIL ATTIRE • R.S.V.P.

NO GIFTS PLEASE

WHEN YOU R.S.V.P., PLEASE BE PREPARED
TO PROVIDE YOUR
SOCIAL SECURITY NUMBER AND
DATE OF BIRTH
FOR SECURITY PURPOSES.

TO R.S.V.P. PLEASE SEND A
FAX TO 312-494-9845
OR CALL 312-494-6777.
THANK YOU.

EXHIBIT
4

facsimile
TRANSMITTAL

[redacted]

to: Mr. & Mrs. Ed Gregory
fax #: [redacted]
cc:
fax #:
re: Chicago Trip
date: October 24, 1997
pages: 2, including this cover sheet.

Good Afternoon!!! Below please find the information regarding Monday in Chicago.

HOTEL: Chicago Hilton & Towers
720 South Michigan Ave.
Chicago, IL 60605
Ph: 312 / 922-4400

YOUR ROOM KEY WILL BE AT THE CONCIERGE DESK UNDER YOUR NAME.

I WILL MEET YOU AT THE FRONT DESK MONDAY AT 7:30PM, TO GO TO THE CULTURAL CENTER.

There will be a Limousine waiting for you at the airport. Since they park far from the luggage claim area you will need to call them at [redacted] as soon as you get off the plane.

Good Luck with your event tonight. Please let me know if there is anything else I can do for you. My portable number is [redacted]

I am looking forward to meet you and your wife on Monday.

From the desk of..

Daniela Castro-Quijada
TONY RODHAM & ASSOCIATES, INC.
1200 Anastasia Avenue
Coral Gable
(305) 445-8
Fax:

EXHIBIT
5

TONY RODHAM & ASSOCIATES, INC.
AND
ANTHONY D. RODHAM, INDIVIDUALLY

CONSULTING SERVICES AGREEMENT

This CONSULTING AGREEMENT is entered into as of the 6th day of June, 1998, by and between TONY RODHAM & ASSOCIATES, a Delaware corporation, and ANTHONY D. RODHAM, Individually, jointly and severally, both located at 1200 Anastasia Avenue, Coral Gables, Florida 33134, and at #13 7th Street, S.E., Washington, D.C. 20003 (hereinafter collectively referred to as "RODHAM") and UNITED SHOWS OF AMERICA, INC., JIM REEVES MUSEUM, INC., GREGORY ENTERTAINMENT CORPORATION, FARON YOUNG ENTERPRISES, INC., AND FUN WORLD, INC., all with principal places of business located at 2011 Johnson Industrial Drive, Nolensville, Tennessee 37135, (hereinafter collectively referred to as "UNITED").

WHEREAS, UNITED contemplates the acquisition and/or development and/or management of various legal businesses, including the above entities, which may be located and authorized to do business, subject to applicable law, in the United States and/or foreign countries.

WHEREAS, RODHAM represents to UNITED that RODHAM owns, manages and has developed several properties and projects, and has extensive experience in the ownership, acquisition, development, restoration, management of various businesses including, but not limited to, funding of hotel properties and other businesses which comprise many other areas that RODHAM represents can be of benefit to UNITED; and

WHEREAS, UNITED wishes to obtain consulting services offered to UNITED by RODHAM as to UNITED'S intentions for possible expansion in the future, by developing and working in these prospective business programs and future operations.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby mutually agreed as follows:

1. Recitals. The above recitals by both parties are true and correct, and are incorporated as part of this Agreement.

2. Consultant Services. RODHAM is hereby retained as an independent consultant to UNITED with respect to specific and general consulting services. RODHAM will perform various functions including communications, negotiating, working in public affairs, public relations, and developing community relations and outreach, strictly for the benefit of UNITED.

ADR DLG

EXHIBIT
6

RODHAM will be available for any management issues on behalf of UNITED. Unless otherwise mutually agreed, such services shall be rendered through telephone conferences and in-person meetings with RODHAM himself, unless UNITED explicitly agrees, in writing, to a senior personnel assistant of RODHAM and its affiliates, and UNITED agrees that said senior personnel assistant is a capable substitute for RODHAM. No travel expenses will be incurred by RODHAM or paid by UNITED without the prior written approval of UNITED. No studies on behalf of UNITED or investigations shall be commenced or performed by RODHAM without the prior written approval of UNITED.

3. Compensation. UNITED shall pay RODHAM fees as set forth below for consulting services performed by RODHAM and satisfactory to UNITED, as further set forth herein.

3.1 RODHAM acknowledges receipt of Twenty-Five Thousand Dollars ($25,000.00), paid at the signing of this Agreement, in cash, to RODHAM by UNITED.

3.2 UNITED, solely at UNITED'S option, may pay RODHAM specific bonuses should UNITED, in its sole discretion, feel RODHAM is entitled to, such as on a specific transaction RODHAM satisfactorily completes for UNITED.

3.3 UNITED shall pay a monthly fee of Two Thousand Five Hundred Dollars ($2,500.00) per month and provide a vehicle, chosen by UNITED, with RODHAM responsible and RODHAM agrees to pay for all maintenance and annual tags for said vehicle. RODHAM agrees no one other than RODHAM'S spouse may use said vehicle and that vehicle will never be used for any unlawful purpose whatsoever. Said monthly fee and vehicle shall commence June 10, 1998, and last until this Agreement is cancelled by either party in accordance with said Agreement, in consideration for RODHAM's services.

In addition, UNITED will be obligated to pay only pre-approved out-of-pocket expenses reasonably incurred by RODHAM in connection with its performance of services pursuant to this Agreement.

4. Relationship of Parties.

4.1 RODHAM and UNITED, their agents, representatives, and employees shall, under no circumstances, be deemed partners, joint venturers, agents, employees or representatives of the other. RODHAM is an independent contractor and shall not be liable in any way whatsoever for the nature and quality of the work performed by UNITED. In

performing services under this Agreement, RODHAM shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of UNITED. All of RODHAM's activities will be at its own risk and RODHAM's employees shall not be entitled to workers' compensation or similar benefits or other insurance protection provided by UNITED to its regular employees. As an independent contractor, RODHAM will be solely responsible for determining the means and methods for performing the services, as long as such decision in no way can be or would be construed as detrimental or damaging to UNITED. UNITED will retain the right to determine the time, the place and the manner in which RODHAM will provide the services. UNITED will receive all the results of RODHAM's services. Any and all work products of any kind and description of RODHAM, on any projects in any way directly or indirectly, that is done for UNITED, including but not limited to, videos, all electronic recordings of any type, photographs, all computer generated work, faxes, copies, et al, belong to UNITED. UNITED shall not be required to provide office space, secretarial services, computers, faxes, or other support for RODHAM's services. RODHAM represents to UNITED that RODHAM has all of these services.

4.2 RODHAM assumes all liability to UNITED or any third party with respect to the performance or the actions or inactions of RODHAM.

5. Term. This Agreement shall commence as of the 10th day of June, 1998, and shall continue until terminated by either party upon thirty (30) days written notice to the other party. Either party may cancel this Agreement with or without cause on thirty (30) days written notice.

6. Obligations of UNITED. UNITED agrees to make reasonable disclosure of all relevant facts to RODHAM and make such time available to RODHAM as is necessary to allow RODHAM reasonably to perform its consulting services pursuant to this Agreement. UNITED shall at all times conduct its business in accordance with law. UNITED shall indemnify and hold harmless RODHAM for any claims, losses, liability, damages and expenses (including legal fees) which RODHAM incurs by following instructions from UNITED or relying upon information provided by UNITED in connection with the performance by RODHAM of services pursuant to this Agreement.

7. Obligations of RODHAM. RODHAM agrees to entirely disclose all relevant facts to UNITED and make such time available to UNITED as is necessary to complete and fulfill requirements of UNITED, as called for in this Agreement. RODHAM, at all times, shall conduct its business as to UNITED in accordance with the law. RODHAM shall indemnify and hold harmless UNITED from any claims, losses, liability, damages and expenses (including legal fees) which UNITED incurs by following advice in its business received by RODHAM or

ADR DLG

relying upon information provided by RODHAM in connection with the performance by UNITED from advice and services provided by RODHAM pursuant to this Agreement.

8. Enforceability. Any provision of this Agreement prohibited by law or by court decree in any locality or state shall be ineffective to the extent of such prohibition, without in any way invalidating or affecting the remaining provisions of this Agreement, as if the provision or part declared void or invalid had never been incorporated in the Agreement, and the remainder of the Agreement shall continue to bind all parties.

9. Notice. For purposes of serving written notice herein, the respective addresses of the parties, unless changed by notice in writing, shall be as noted in the first paragraph of this Agreement. Any notice required or desired hereunder shall be deemed given if in writing sent by certified mail, return receipt requested, postage prepaid to said address.

10. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Tennessee.

11. Arbitration. In the event of any dispute arising out of the Agreement, the parties agree that the same shall be submitted for binding arbitration in accordance with the rules of the American Arbitration Association then in effect. Venue for arbitration proceedings shall be in the city of Nashville, Davidson County, Tennessee.

12. Jurisdiction and Venue. Jurisdiction and venue shall lie in the State Courts of Davidson County, Tennessee, for any litigation which arises out of this Agreement.

13. Modification. This Agreement contains the entire agreement between the parties and shall not be modified, except in writing, signed by both parties.

14. Waiver. Failure to enforce any provision hereof shall not constitute a waiver of a party's right thereafter to enforce each and every such provision or any other provision.

15. Caption and Numbers. The captions and numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such numbers, not in any way affect this Agreement. Any pronouns or words shall refer to masculine, feminine or neuter, singular or plural, as the context requires.

16. Assignment. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns and may not be assigned by RODHAM without UNITED's written consent.

ADR DLG

17. Authority. The individuals signing below represent and warrant that they have the authority to bind their respective companies to this agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be duly executed on their behalf by their respective and duly authorized officers.

Witness

Witness

TONY RODHAM & ASSOCIATES, INC.

By: Tony Rodham, President

Anthony D. Rodham Individually

Witness

UNITED SHOWS OF AMERICA, INC.

By: Donald L. Gregory, President

Witness

JIM REEVES MUSEUM, INC.

By: Donald L. Gregory, President

Witness

GREGORY ENTERTAINMENT CORP.

By: Donald L. Gregory, President

Witness

FARON YOUNG ENTERPRISES, INC.

By: Donald L. Gregory, President

Witness

FUN WORLD, INC.

By: Donald L. Gregory, President

TONY RODHAM & ASSOCIATES, INC.

CONSULTING SERVICES AGREEMENT

This CONSULTING AGREEMENT is entered into as of the 1st day of August, 1997, by and between Tony Rodham & Associates, a Delaware Corporation, 1200 Anastasia Avenue, Coral Gables, Florida 33134, (hereinafter referred to as "Consultant") and United Shows of America a Delaware Corporation, located at 2011 Johnson Industrial Blvd. Nolensville, TN 37135,(hereinafter referred to as "Company").

WHEREAS, the Company contemplates the acquisition or development of hotel properties;

WHEREAS, the Consultant owns, manages and develops, several properties, and projects and has extensive experience in the ownership, acquisition, development, restoration, management and funding of properties and other areas that can be of benefit to client; and

WHEREAS, the Company wishes to obtain consulting services from Consultants in relation to the Company's current and prospective business program and operations.

NOW, THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby mutually agreed as follows:

1. Recitals. The above recitals are true and correct incorporated as part of this Agreement.

2. Consultant Services. Consultant is hereby retained as an independent consultant to the (entity) with respect to the general consulting services Consultant will perform various functions including communications, public affairs, public relations, and community relations and outreach. Consultant will be available for issue and crisis management on behalf of the client. Unless otherwise mutually agreed, such services shall be rendered through telephone conferences and in-person meetings with senior personnel of Consultant and its affiliates and shall be based upon the accumulated experience of Consultant without requiring Consultant to engage any employees not otherwise employed by Consultant or to perform any studies or investigations not otherwise required by Consultant in the ordinary course of its own operations. No travel expenses will be incurred by Consultant or paid by United Shows of America without the prior written approval of united Shows of Americas. No studies or investigations shall be performed by Consultant without the prior written approval of United Shows of Americas

3. Compensation. The Company shall pay Consultant a retainer fee of Two Hundred Thousand Dollars ($200,000) of this Agreement for consulting services.

1200 Anastasia Ave. Coral Gables, FL 33134 • Tel. (305) 444-9783 Fax: (305) 913-3
RodhamAssc@AOL.com

EXHIBIT 7

3.1 In addition, the Company shall pay a monthly fee of Twenty Five Hundred Dollars ($2,500) per month and provide a vehicle, commencing May 1, 1998 for the duration of this Agreement in consideration for the Consultant's services.

In addition, the Company will be obligated to pay out-of-pocket expenses reasonably incurred by Consultant in connection with its performance of services pursuant to this Agreement.

4. Relationship of Parties.

4.1 Consultant and Company, their agents, representatives, and employees shall, under no circumstances be deemed partners, joint venturers, agents, employees or representatives of the other. Consultant is an independent contractor and shall not be liable in any way whatsoever for the nature and quality of the work performed by the Company. In performing services under this Agreement, Consultant shall operate as an have the status of an independent contractor and shall not act as or be an agent or employee of Company. All of Consultant's activities will be at its own risk and Consultant's employees shall not be entitled to workers' compensation or similar benefits or other insurance protection provided by Company. As an independent contractor, Consultant will be solely responsible for determining the means and methods for performing the services. Consultant will determine the time, the place, and the manner in which it will provide the services. Company will receive only the results of Consultant's services. Company shall not be required to provide office space, secretarial services, or other support for Consultant's services.

4.2 The Company agrees that the Consultant assumes no liability to the Company or any third party with respect to the performance or the action or inaction of the Consultant.

5. Term. This Agreement shall commence as of August 1, 1997, and shall continue until terminated by either party upon thirty (30) days written notice to the other party.

6. Obligations of the Company. The Company agrees to make reasonable disclosure of all relevant facts to the Consultant and make such time available to the Consultant as is necessary to allow Consultant reasonably to perform its consulting services pursuant to this Agreement. The Company shall at all times conduct its business in accordance with law. The Company shall indemnify and hold harmless Consultant for any claims, losses, liability, damages and expenses (including legal fees) which Consultant incurs by following instructions from the Company or relying

upon information provided by the Company in connection with the performance by Consultant of services pursuant to this Agreement.

7. Enforceability. Any provision of this Agreement prohibited by law or by court decree in any locality or state shall be ineffective to the extent of such prohibition without in any way invalidating or affecting the remaining provisions of this Agreement as if the provision or part declared void or invalid had never been incorporated in the Agreement, and the remainder of the Agreement shall continue to bind all parties.

8. Notice. For purposes of serving written notice herein, the respective addresses of the parties, unless changed by notice in writing, shall be as noted in the first paragraph of this Agreement. Any notice required or desired hereunder shall be deemed given if in writing sent by certified mail, postage prepaid to said address.

9. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

10. Arbitration. In the event of any dispute arising out of the Agreement, the parties agree that the same shall be submitted for binding arbitration in accordance with the rules of the American Arbitration Association than in effect. Venue for arbitration proceedings shall be in Dade County, Florida.

11. Jurisdiction and Venue. Jurisdiction and venue shall lie in the State Courts of Miami Dade County, Florida for any litigation which arises out of this Agreement.

12. Modification. This Agreement contains the entire agreement between the parties and shall not be modified, except in writing, signed by both parties.

13. Waiver. Failure to enforce any provision hereof shall not constitute a waiver of a party's right thereafter to enforce each and every such provision or any other provision.

14. Caption and Numbers. The captions and numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such numbers, not in any way affect this Agreement. Any pronouns or words shall refer to masculine, feminine or neuter, singular or plural, as the context requires.

15. Assignment. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns and may not be assigned by Consultant without Company's consent.

16. Authority. The individuals signing below represent and warrant that they have the authority to bind their respective companies to this Agreement.

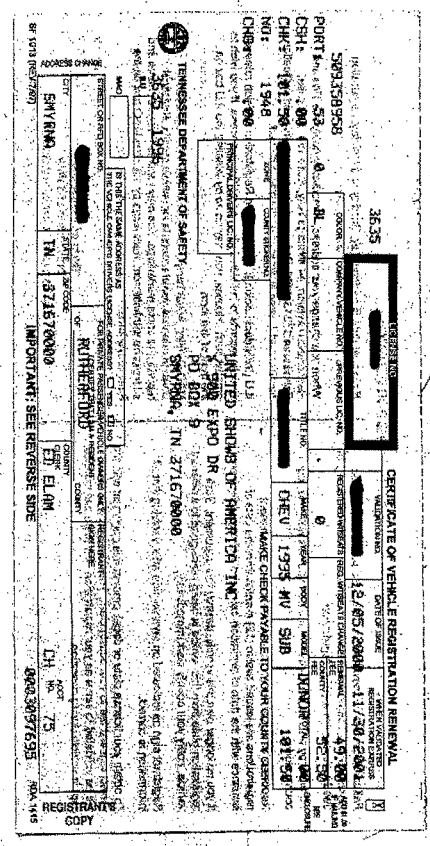
IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be duly executed on their behalf by their respective and duly authorized officers.

TONY RODHAM & ASSOCIATES, INC.

Witness: _____ By: _____ PRESIDENT
Name:
Title:

UNITED SHOWS OF AMERICA

Witness: _____ By: _____
Name:
Title:


CERTIFICATE OF VEHICLE REGISTRATION RENEWAL
TENNESSEE DEPARTMENT OF SAFETY
REGISTRANT COPY
EXHIBIT
8

06/07/2001 14:29 6154623033 EAG PRIVATE PAGE 03

MIDDLE TENNESSEE 309/695

VEHICLE INSPECTION REPORT

THANK YOU FOR HELPING CLEAN UP OUR AIR. *Your vehicle's inspection results are shown below. If it passed, tear off the certificate and submit it along with your registration documents. If it failed, it must be repaired and pass reinspection before it can be registered.* You are entitled to one free reinspection. To qualify, return your vehicle to any official inspection center along with this report. If your vehicle failed, Public Chapter #339 may allow you a 30-day grace period in which to register your vehicle. This inspection was performed in accordance with State of Tennessee and Davidson County Light-Duty Motor Vehicle Inspection and Maintenance Regulations. Since this test meets all provisions of Section 207(b) of the Federal Clean Air Act, repairs to failed vehicles *may be covered* by warranty. See the back of this report or check your owner's manual for details.

THE CERTIFICATE AT BOTTOM IS VALID FOR 90 DAYS. IT IS VOID WHEN ALTERED, AND CANNOT BE REPLACED IF LOST OR STOLEN.

TEST FEE	EMISSIONS INSPECTION		TAMPERING INSPECTION			FINAL RESULT
	HC	CO	Fuel Inlet Restrictor	Catalytic Converter	Proper Seal in Gas Cap	
$ 6.00	PASS	PASS	PASS	PASS	PASS	PASS

VEHICLE INFORMATION				
License Number	Vehicle Identification Number	Year	Make	Mileage
[redacted]	[redacted]	1995	CHEV	190,000

IDLE EMISSIONS READINGS	HC (ppm)	CO (%)	CO_2 (%)
Maximum Allowable	167	1.2	13.4
Vehicle Readings	54	0.02	13.4

FOR OFFICIAL USE ONLY

STAT		TYPE	H	TEST	I	VFY	CUST
FAC	11S	UNIT	2	INSP	40903 40903	RVIR	DATE/TIME 12/05/2000 09:53:12

EXHIBIT 9

Principal Financial Group

Please be sure form is complete so enrollment is not delayed.
Please print using black ink and press hard for good copies.

Underwritten by: Principal Life Insurance Company | Tennessee Enrollment Information

Company Name _____ Account Number: N

A. Employee Information

The Principal to Complete

Your name (last, first, middle initial): [illegible] ANTHONY D.	Social security number: [redacted]	Effective date	Effective dat
Address (street or P.O. Box): [redacted]	City: WASHINGTON State: D.C. ZIP code: 20003	☐ life ☐ Dependent life ☐ STD ☐ LTD ☐ supplemental life dental ☐ Member ☐ Dependent	medical ☐ Member ☐ Depender
Date of birth (mo/day/yr): [redacted]	Marital status: ☒ male ☐ female ☐ single ☒ married ☐ divorced ☐ legally separated		
Date of Full-Time employment: 10-1-98	Job position/location: [illegible]		
Present salary excluding overtime, bonuses, and commissions (check one): $ 62,755 ☒ yr ☐ mo ☐ wk ☐ hr	Hours per week: AS NEEDED		

B. Beneficiary Designation: Complete only if your coverages include group term life insurance.

Beneficiary for employee group term life insurance (Print as "Doe, Mary A.", not "Mrs. John Doe".)

last name	first name	middle initial	relationship to you
RODHAM	NICOLE	B.	WIFE

Unless otherwise provided herein, if two or more beneficiaries are named, the proceeds shall be paid in equal shares to the named beneficiaries surviving the insured. If no beneficiary been designated, any proceeds will be payable as provided by the group policy. If additional space is needed for beneficiary designation, please use the Change of Beneficiary form.

C. Benefit Election: Ask your employer about coverages. Check your election option(s) below.

If you do not elect any or all coverages for yourself and any or all eligible Dependents, complete the Request for Refusal Group Coverage on the next page and indicate the reason.

Medical - I elect medical coverage for:
☒ myself ☒ spouse ☒ child(ren) 1 (indicate number of child(ren) to be covere

Dental - I elect dental coverage for:*
☐ myself ☐ spouse ☐ child(ren) _____ (indicate number of child(ren) to be covere

* You may refuse dental coverage for yourself if allowed by your firm's dental coverage and only if you have other group dental coverage.

Supplemental Life - If your employer provides supplemental life coverage, do you elect the coverage?
☒ yes ☐ no

NOTE: If you are applying for Dependent coverage, you must apply for all eligible Dependents (unless coverage is provided under another group coverage).

D. Dependent Information: Please list your spouse and all eligible children.

Name of spouse: NICOLE B. RODHAM | Social security number: [redacted] | Date of birth (mo/day/yr): [redacted]

Full name of Dependent child(ren)	Social security number	Date of birth mo	day	yr	Full-Time Student	Foster child	Step child	Handicapped child	Male	Femal
1. ZACHARY B. RODHAM		[redacted]							✓	
2.										
3.										

Dependents must meet eligibility requirements. Foster child and stepchild eligibility is subject to approval by The Principal. Complete a Foster Child and Stepchild Questionnaire. I have Developmentally Disabled/Physically Handicapped children over age 24, complete an Application to Continue Handicapped Child. Contact your employer for assistance wit questions.

E. Employee Signature

If the group policy requires that contributions be made by me, I authorize my employer to deduct them from my pay. I have read notice regarding the Preexisting Condition Exclusion and Special Enrollment Rights, located on the back page of this form, a understand these provisions. I declare that the information given on this enrollment form is complete and true. I understand an a cannot guarantee coverage or revise rates, benefits, or provisions without written approval of The Principal.

Signature of employee (do not print): [signature] | Date signed: 3/29/99

EXHIBIT 10

PENGAD-Bayonne, N.J.

GP 12892 02/1991

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no. UNITED SHOWS OF AMERICA, IN [redacted] NOLENSVILLE, TN 37135 (615)776-5656	1 Rents $ 0.00 2 Royalties $ 0.00 3 Other income $ 0.00	OMB No. 1545-0115 1998 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number [redacted] / RECIPIENT'S identification number [redacted]	4 Federal income tax withheld $ 0.00	5 Fishing boat proceeds $ 0.00	Copy A For Internal Revenue Service Center
RECIPIENT'S name ANTHONY D. RODHAM	6 Medical and health care payments $ 0.00	7 Nonemployee compensation $ 62985.00	File with Form 1096.
Street address (including apt. no.) [redacted]	8 Substitute payments in lieu of dividends or interest $ 0.00	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	For Paperwork Reduction Act Notice and instructions for completing this form, see the 1998 Instructions for Forms 1099, 1098, 5498, and W-2G.
City, state, and ZIP code WASHINGTON, DC 20003	10 Crop insurance proceeds $ 0.00	11 State income tax withheld $ 0.00	
Account number (optional) / 2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 41-852411 Department of the Treasury - Internal Revenue Service

Do NOT Cut or Separate Forms on This Page

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $ 2 Royalties $ 3 Other income $	OMB No. 1545-0115 1998 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number / RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy A For Internal Revenue Service Center
RECIPIENT'S name	6 Medical and health care payments $	7 Nonemployee compensation $	File with Form 1096.
Street address (including apt. no.)	8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	For Paperwork Reduction Act Notice and instructions for completing this form, see the 1998 Instructions for Forms 1099, 1098, 5498, and W-2G.
City, state, and ZIP code	10 Crop insurance proceeds $	11 State income tax withheld $	
Account number (optional) / 2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 41-852411 Department of the Treasury - Internal Revenue Service

Do NOT Cut or Separate Forms on This Page

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $ 2 Royalties $ 3 Other income $	OMB No. 1545-0115 1998 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number / RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy A For Internal Revenue Service Center
RECIPIENT'S name	6 Medical and health care payments $	7 Nonemployee compensation $	File with Form 1096.
Street address (including apt. no.)	8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	For Paperwork
City, state, and ZIP code	10 Crop insurance proceeds $	11 State income tax withheld $	
Account number (optional) / 2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 41-852411 Department of the Treasury - Internal Revenue Service

EXHIBIT 11

PENGAD-Bayonne, N. J.

9595 ☐ VOID ☑ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $	OMB No. 1545-0115	Miscellaneous Income
UNITED SHOWS OF AMERICA, INC. 3011 JOHNSON INDUSTRIAL BLVD. [redacted] NOLENSVILLE, TN 37135 615-776-5656	2 Royalties $ 3 Other income $	1999 Form 1099-MISC	

PAYER'S Federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy A For Internal Revenue Service Center
RECIPIENT'S name ANTHONY D. RODHAM		6 Medical and health care payments $	7 Nonemployee compensation $ 85,806.27	File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice and instructions for completing this form, see the 1999 Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.) [redacted]		8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	
City, state, and ZIP code WASHINGTON, DC 20003		10 Crop insurance proceeds $	11 State income tax withheld $	
Account number (optional)	2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 48-0971237 Department of the Treasury - Internal Revenue Service

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9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $	OMB No. 1545-0115	Miscellaneous Income
	2 Royalties $ 3 Other income $	1999 Form 1099-MISC	

PAYER'S Federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy A For Internal Revenue Service Center
RECIPIENT'S name		6 Medical and health care payments $	7 Nonemployee compensation $	File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice and instructions for completing this form, see the 1999 Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.)		8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	
City, state, and ZIP code		10 Crop insurance proceeds $	11 State income tax withheld $	
Account number (optional)	2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 48-0971237 Department of the Treasury - Internal Revenue Service

Do NOT Cut or Separate Forms on This Page — Do NOT Cut or Separate Forms on This Page

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $	OMB No. 1545-0115	Miscellaneous Income
	2 Royalties $ 3 Other income $	1999 Form 1099-MISC	

PAYER'S Federal identification number	RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy A For Internal Revenue Service Center
RECIPIENT'S name		6 Medical and health care payments $	7 Nonemployee compensation $	File with Form 1096. For Privacy Act and Paperwork Reduction
Street address (including apt. no.)		8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ►	
City, state, and ZIP code		10 Crop insurance proceeds $	11 State income tax with $	
Account number (optional)	2nd TIN Not. ☐	12 State/Payer's state number	13 $	

Form 1099-MISC 48-0971237 Department of the Treas

EXHIBIT 12

☐ CORRECTED (if checked)

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	
UNITED SHOWS OF AMERICA, INC. [redacted] [redacted] SMYRNA, TN 37167-0009 615-462-3000	$ 2 Royalties $ 3 Other income $	2000 Form 1099-MISC	Miscellaneous Income
PAYER'S Federal identification number: [redacted] / RECIPIENT'S identification number	4 Federal income tax withheld $	5 Fishing boat proceeds $	Copy B For Recipient
RECIPIENT'S name ANTHONY D. RODHAM	6 Medical and health care payments $	7 Nonemployee compensation $ 93978.66	This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported
Street address (including apt. no.) [redacted]	8 Substitute payments in lieu of dividends or interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	
City, state, and ZIP code WASHINGTON, DC 20003	10 Crop insurance proceeds $	11 State income tax withheld $	
Account number (optional)	12 State/Payer's state number	13 $	

Form 1099-MISC (Keep for your records.) Department of the Treasury - Internal Revenue Service

PENGAD-Bayonne, N. J. EXHIBIT 13

1645

PROMISSORY NOTE
Smyrna, TN 37167

$ 72,000.00 - interest Date: December 12, 2000

For value received, I, ANTHONY D. RODHAM, promise to pay to the order of: United Shows of America, Inc., or assigns, at the office of United Shows of America, Inc. located at 900 Expo Drive, P.O. Box 9, Smyrna, TN 37167, or other places as designated in writing from Holder to Maker, the sum of Seventy-Two Thousand and No/100 Dollars ($72,000.00) principal and interest at the rate of eight percent (8%) per annum, from date, to be paid, without demand, as follows:

1. Full payment of principal and interest is due and payable in one payment on December 12, 2001.

2. This Note may be prepaid in part or in full at any time without penalty.

3. After maturity, whether by acceleration or lapse of time, all amounts owing on this Note shall bear interest at the rate of eighteen percent (18%) per annum.

4. It is understood and agreed that time is of the essence of this agreement and that on default in the payment of any installment, or any part thereof, when due, then after written notice to maker(s), prepaid by certified mail, return receipt requested, and maker(s) and guarantor(s), if any, are given ten (10) days to cure default, from date notice is mailed to maker's last known address, the holders hereof, at their election, may accelerate the unpaid balance and declare the same due and payable immediately without further presentment for demand for payment of any past due installment or of any remaining unpaid balance and without notice of intent to accelerate the payment of the unpaid balance due to any parties to this instrument.

5. Each maker, endorser, and guarantor or other surety of this Note does hereby waive any further demand other than in paragraph five (5), grace, notice, presentment for payment, notices of intention to accelerate maturity, notice of acceleration of maturity, notices of protests and further does hereby agree and consent that this Note may be renewed only at option of holders, and the time for payment may be extended without notice and without releasing any of the parties, only at option of holders, who have absolutely no responsibility or obligation to do so.

6. The maker will pay on demand all reasonable costs of collection, legal expenses, and attorney's fees incurred or paid by the holder in collecting or enforcing the Note on default, with interest thereon at the rate of eighteen percent (18%) per annum, or the highest legal rate allowed by law, whichever is greater, until paid. Maker and any Guarantor or Endorser further agree that the validity, enforceability and effectiveness of each provision hereof and the obligations, rights and remedies of each of them in any way relating to or arising under this Promissory Note shall be governed and construed in accordance with the laws of the State of Tennessee.

7. If any installment of this note, or the interest, is not paid when due, the remaining unpaid hereof shall, without notice or demand, become immediately due and p option of the Holder, and may be recovered in any suit brought by the Holder of this no

EXHIBIT
14

000003

one or more or all of us, at the option of said Holder, whether such suit has been commenced against the Maker or not, and in any such suit the Maker may be joined with one or more or all of us, at the option of Holder.

8. The Holder of this Note shall not be required to look to any security given or held for the payment of this Note, but may proceed against us, or either or all of us, immediately upon a default in payment, or otherwise. Any execution may be immediately levied upon any real or personal property of the undersigned, all right of the undersigned to have personal property last taken and sold under such execution being hereby expressly waived.

9. No delay or omission on the part of the holders in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.

10. This Note is given, for payment of: Loans, by check(s) and cash received by Maker, in the year 2000 in the amount of Seventy-Two Thousand and No/100 ($72,000.00) Dollars, plus interest at the rate of eight percent (8%).

11. Notices: any notice to makers and guarantors required or sent concerning this note, shall be as specified in paragraph five (5) of Note.

12. Interest, if any, on the debt evidenced by this agreement shall not exceed the maximum amount of uno-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt, or if that has been paid, refunded. On any acceleration or prepayment, or, if already paid, credited on the principal of the debt, or the principal of the debt has been paid, refunded. This provision overrides other provisions in this instrument.

13. I, WE HAVE READ THIS NOTE. I, WE STATE THAT AN OPPORTUNITY TO HAVE COUNSEL OF MY, OUR CHOICE TO EXAMINE AND APPROVE NOTE HAS BEEN GIVEN ME, US AND THAT I, WE DID RECEIVE ALL VALUE AND/OR MONIES DESCRIBED IN SAID NOTE AND I, WE HAVE RECEIVED AN EXACT COPY OF SAME, CONSISTING OF TWO PAGES.

Signed this 12th day of December, 2000.

Witness to Signature

Lucie E. Dubuisson

ANTHONY D. RODHAM

Witness to Signature

November 16, 1998

Hon. Roger C. Adams
Pardon Attorney
U.S. Department of Justice
500 First Street, NW
Suite 400
Washington, D.C. 20530

Re: Pardon Application
Vonna Jo Gregory

Dear Mr. Adams:

Enclosed is a petition for pardon addressed to the President of the United States, completed with as much information that we could obtain and retrieve from our records, in order to hopefully provide you with sufficient and informative original documents that we hope will allow you, based upon your review and investigation, as you deem necessary, to recommend the President grant this pardon.

Very truly yours,

Vonna Jo Gregory

Vonna Jo Gregory

Via FedEx

Enc/AS

EAG/led

EXHIBIT
15

000144

P. O. BOX 1089 ☐ NOLENSVILLE, TENNESSEE 37135 ☐ (615) 776-5656

November 14, 1998

Hon. William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: Pardon Petition

Dear President Clinton:

As required by the Petition for Pardon After Completion of Sentence, I am submitting all information as required in the notice, rules and information and instructions on requesting a pardon. Please personally review the application and exhibits enclosed herein and I respectfully ask that you grant this request for a Presidential Pardon.

Respectfully submitted,

Vonna Jo Gregory

Vonna Jo Gregory

Encl/AS

VJG/led

EXHIBIT
16

000028

P. O. BOX 1089 ☐ NOLENSVILLE, TENNESSEE 37135 ☐ (615) 776-5656

Florida Department of Agriculture & Consumer Services
BOB CRAWFORD, Commissioner
The Capitol • Tallahassee, FL 32399-0800

Please Respond to:

January 28, 2000

Mr. Roger C. Adams, Esquire
Pardon Attorney
Office of the Pardon Attorney
500 1st Street NW, Suite 400
Washington, DC 20530

Dear Mr. Adams,

CONFIDENTIAL
DO NOT DISCUSS, DUPLICATE,
RECORD BY ANY ELECTRONIC MEANS,
DISTRIBUTE, PHOTOGRAPH, VIDEO, ETC.
without written permission of
E. A. of Vonna Jo Gregory

Last year I wrote a letter to the Department of Justice on behalf of Mr. Ed Gregory and his wife Vonna Jo supporting their application for pardon. As a statewide elected official of the Florida Cabinet and a member of the State Board of Elementary, I feel strongly that the Gregory's pardon request is exceptional meritorious.

As a matter of urgency, I am writing again requesting that the Gregory's pardon be considered at the earliest possible date. I am asking for this because of my statutory responsibilities for overseeing the Florida State Fair. Over the last three years, United Shows, Inc. have been under an exclusive contract with our fair for midway operations. This has been an outstanding venture for us due to the Gregory's experience and reliability.

Next month the Florida State Fair will again enter into contract negotiations for our midway management. Unfortunately, the current blemish on Mr. and Mrs. Gregory's record has been exploited by detractors to create artificial barriers for competitive reasons. In fact, some have attempted full-fledged character assassination as a ploy to discredit Mr. and Mrs. Gregory. Not only do I consider these maneuvers unethical, I believe they hinder our ability to conduct good business with known industry leaders.

Ed and Vonna Jo Gregory as United Shows, Inc. have a proven track record in the entertainment industry and especially here at our Fair. Following a brief period of instability at the Florida State Fair, Mr. Gregory's professional and polished business strategies were a significant part of our financial turn-around. In addition to managing our midway, in a safe and responsible manner, Ed and Vonna Joe has served in positions of trust, stewardship and charity on behalf of this organization.

Fresh Florida
orida Agriculture and Forest Pro
$53 Billion for Florida's Economy

EXHIBIT
17

It is a known fact that the Gregory's have donated hundreds of thousands of dollars to children's programs at various Florida fairs. United Shows, Inc. has the Industry reputation of a company that gives something back and truly cares about each community that it serves. Since 1982, United Shows, Inc. has provided a Shriners Day at our fairs for disabled children to attend free of charge for a whole day. Another example of generosity is allowing the local Boys Scout Clubs a free afternoon at the fair, along with providing a $10,000 donation for our livestock awards program which recognizes our young farmers. These are just a few examples of the good will and guardianship that the Gregory's offer to our fair community.

Your expeditious consideration of this matter, hopefully will avoid any damage to our operations which are important to our overall responsibilities to the State of Florida.

Sincerely,

Bob Crawford
Commissioner of Agriculture

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Without Written Permission of
E. A. or Vonna Jo Gregory

U. S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

MAR 15 2000

SENT BY MESSENGER

Mark P. Schnapp, Esq.
Greenberg & Traurig
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006

Dear Mr. Schnapp:

On the above date, the President granted your clients, Edward Allen and Vonna Joe Gregory, full and unconditional pardons. Enclosed are the warrants evidencing the Gregorys' pardons by the President and documents acknowledging receipt of the warrants. Please deliver the warrants to Mr. and Mrs. Gregory and have them execute the receipts and return them to this office in the enclosed postage-paid envelope.

CONFIDENTIAL
DO NOT DISCUSS, DUPLICATE, RECORD BY ANY ELECTRONIC MEANS, DISTRIBUTE, PHOTOGRAPH OR VIDEO Without Written Permission of Vonna Jo Gregory

A presidential pardon is a sign of forgiveness. It does not erase or expunge the record of conviction and does not indicate innocence. On any application or other document which requires the information, a pardon recipient should disclose the fact of his or her conviction. However, the information that a pardon has been granted may be included and the warrant may be shown.

A presidential pardon restores basic civil rights and removes federal firearms disabilities resulting from the conviction to which the pardon relates. Mr. and Mrs. Gregory should consult with appropriate state authorities regarding their firearms privileges under state law, their exercise of such state law rights as voting, serving on a jury, and holding public office, and their eligibility for occupational and professional licenses.

Sincerely,

Roger C. Adams

Roger C. Adams
Pardon Attorney

EXHIBIT
18

Ms. Vonna Jo Gregory
522 Franklin Road
Brentwood, TN 37027

Dear Ms. Gregory:

Enclosed is the Warrant evidencing your pardon by the President. Please sign and date the acknowledgment below, and return this letter to the Office of the Pardon Attorney in the enclosed postage-paid, self-addressed envelope.

Sincerely,

Roger C. Adams
Deputy Pardon Attorney

CONFIDENTIAL
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RECORD BY ANY ELECTRONIC MEANS,
DISTRIBUTE, PHOTOGRAPH, VIDEO, ETC.
Without Written Permission of
E. A. or Vonna Jo Gregory

I hereby acknowledge that I have received the Warrant of Pardon.

Signature: Vonna Jo Gregory

Address: 522 Franklin Road
Brentwood Tn 37027

Date: 3-17-2000



Sent by: Greenberg Traurig DC 1 2024524899; 03/16/00 3:51PM; JetFax #126; Page 2/3

Executive Grant of Clemency

WILLIAM J. CLINTON

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY THE PRESIDENT HAS GRANTED UNTO

VONNA JO GREGORY

A FULL AND UNCONDITIONAL PARDON

RECORD CONFIDENTIAL, DO NOT DISCUSS, DUPLICATE, DISTRIBUTE BY ANY ELECTRONIC MEANS, WHETHER PHOTOGRAPH, VIDEO, ETC. without written permission of E. A. Gregory

FOR HER CONVICTION in the United States District Court for the Southern District of Alabama on an indictment (Doc. No. 86-00155) for violations of Sections 371, 656, and 2, Title 18, United States Code, for which she was sentenced on October first, 1986, to three years' probation.

THE PRESIDENT HAS DESIGNATED, directed and empowered the Pardon Attorney as his representative to sign this grant of executive clemency.

In accordance with these instructions and authority I have signed my name and caused the seal of the Department of Justice to be affixed hereto and affirm that this action is the act of the President being performed at his direction.

Done at the City of Washington, District of Columbia, on March 15, 2000.

BY DIRECTION OF THE PRESIDENT

Roger C. Adams

PARDON ATTORNEY

Mr. Edgar Allen Gregory, Jr.
522 Franklin Road
Brentwood, TN 37027

Dear Mr. Gregory:

Enclosed is the Warrant evidencing your pardon by the President. Please sign and date the acknowledgment below, and return this letter to the Office of the Pardon Attorney in the enclosed postage-paid, self-addressed envelope.

Sincerely,

Roger C. Adams
Pardon Attorney

CONFIDENTIAL
DO NOT DISCUSS, DUPLICATE,
RECORD BY ANY ELECTRONIC MEANS,
DISTRIBUTE, PHOTOGRAPH, VIDEO, ETC.
Without Written Permission of
E. A. or Vonna Jo Gregory

I hereby acknowledge that I have received the Warrant of Pardon.

Signature: E. A. Gregory

Address: 522 Franklin Rd
Brentwood, TN 37027

Date: 3-17-2000

EXHIBIT
20

Sent by: Greenberg Traurig 2024524899; 03/16/00 3:51PM;JetFax #126;Page 3/3

Executive Grant of Clemency

WILLIAM J. CLINTON

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY THE PRESIDENT HAS GRANTED UNTO

EDGAR ALLEN GREGORY

CONFIDENTIAL
DO NOT DISCUSS, DUPLICATE,
RECORD BY ANY ELECTRONIC MEANS,
DISTRIBUTE, PHOTOGRAPH, VIDEO, ETC.
Without Written Permission of
E. A. or Vonna Jo Gregory

A FULL AND UNCONDITIONAL PARDON

FOR HIS CONVICTION in the United States District Court for the Southern District of Alabama on an indictment (Doc. No. [illegible]) for violations of Sections 371, 656, and 2, Title 18, United States Code, for which he was sentenced on October first, 1986, to five years' probation.

THE PRESIDENT HAS DESIGNATED, directed and empowered the Pardon Attorney as his representative to sign this grant of executive clemency.

In accordance with these instructions and authority I have signed my name and caused the seal of the Department of Justice to be affixed hereto and affirm that this action is the act of the President being performed at his direction.

Done at the City of Washington, District of Columbia, on March 15, 2000.

BY DIRECTION OF THE PRESIDENT

Roger C. Adams

PARDON ATTORNEY

March 16, 2000

The Honorable William Jefferson Clinton
President of the United States of America
c/o Ms. Betty Currie
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20502

Dear President Clinton:

We thank you very much for granting our pardons. We fully realize that even though there are many steps and levels of investigation that are procedurally required in the process of an individual obtaining a pardon, the final determination of us as applicants is absolutely your decision as President.

We humbly and gratefully acknowledge the receipt of these pardons and respectfully send this letter of gratitude from our entire family and thank you for having the faith in us to grant our request.

With every good wish,

E. A. Gregory

Vonna Jo Gregory

Via FedEx Priority

EAG
VJG/led

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DO NOT DISCUSS, DUPLICATE, RECORD BY ANY ELECTRONIC MEANS, DISTRIBUTE, PHOTOGRAPH, VIDEO, ETC.
Without Written Permission of
E. A. or Vonna Jo Gregory

EXHIBIT
21

P. O. BOX 1089 □ NOLENSVILLE, TENNESSEE 37135 □

**A recent stroke has impaired my memory. The information below is to the best of my recollection.

PETITION FOR PARDON AFTER COMPLETION OF SENTENCE

Please read accompanying instructions carefully before beginning. Typewrite or print the answers in ink. Each question must be answered fully, truthfully, and accurately. If the space for any answer is insufficient, petitioner may complete answer on a separate sheet of paper and attach it to the petition. Submission of material, false information is punishable by imprisonment of up to five years and a fine of not more than $250,000. 18 U.S.C. §§ 1001 and 3571.

TO THE PRESIDENT OF THE UNITED STATES:

The undersigned petitioner prays for a pardon and in support thereof states as follows:

1. Full name: Fernando (First) (Middle) Fuentes Coba (Last)

Address: [redacted] (Number) (Street) (City) (State) (Zip Code)

Telephone Number (include area code): [redacted]

Social Security No. [redacted] Date and place of birth: 06/21/1928, Havana, Cuba

Sex: M Height: 5'8" Weight: 160 Hair Color: Brown Eye Color: Brown

Are you a United States citizen? ☒ yes ☐ no If not, state nationality and give alien registration number: n/a. If naturalized U.S. citizen, furnish date and place of naturalization: Miami, Florida, 1969

State in full every other name by which you have been known, including name under which you were convicted, the reason for the use of another name, and the dates during which you were so known (for example, include your maiden name, name(s) by a former marriage(s), alias(es), and nickname(s)).

Offense(s) For Which Pardon Is Sought

2. Petitioner was convicted on a plea of not guilty (guilty, not guilty, nolo contendere) in the United States District Court for the Southern (Northern, Western, etc.) District of Florida (Identify state) of the crime of: conspiracy to violate The Trading With The Enemy Act and the Cuban Assets Control Regulations (Describe specific offense)

and was sentenced on December 14, 1982 to ☒ imprisonment for one year, ☐ probation for _____, ☒ a fine of $10,000, and/or ☐ restitution of $_____.

Petitioner was 50-51 years of age when the offense was committed.

3. Petitioner began service of the sentence of ☐ imprisonment ☐ probation on _____, 19__; was released on _____, 19__ from _____ (Federal Institution); and was finally discharged by expiration of sentence on _____, 19__. Petitioner ☒ did ☐ did not appeal the conviction.

Indicate the date(s) on which the fine, restitution or special assessment was paid. If the fine, restitution, or assessment have not been paid in full, explain why. If appealed, please provide the date of decision(s) by the Court of Appeals and, if applicable, the Supreme Court. Please also provide citations to any published judicial opinion(s) or a copy of unpublished opinion(s). (An optional continuation page is provided.)

See Continuation Page "Answers to Questions."

EXHIBIT 22

PRICO-Bayonne, N. J.

4. Give a complete and detailed account of petitioner's offense(s), including dates (or time span) of the offense, names of codefendants and, when applicable, amount of money involved. Petitioner is expected to describe the factual basis of her/his offense completely and accurately and not rely on criminal code citations or name references only. If the conviction resulted from a plea agreement, petitioner should describe fully the extent of her/his total involvement in the criminal transaction(s), in addition to the charge(s) to which she/he pled guilty.

See attachment A.

. Prior and Subsequent Criminal Record

5. Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority, whether federal, state, local or foreign, either as a juvenile or adult for any incident, aside from the offense for which pardon is sought? ☐ yes ☒ no
For each incident list date, nature of charge, factual circumstances, law enforcement authority involved, location, and disposition. You must list every violation, including traffic violations that resulted in an arrest or criminal charge; for example, driving under the influence. Any omission will be considered a falsification. (An optional continuation page is provided if necessary.)

n/a

*Also known as Vivian Elena Fuentes Mannerud

Biographical Information

6. Current marital status: ☐ Never Married ☒ Married ☐ Divorced ☐ Widowed ☐ Separated

For each marriage give the following: name of spouse, date and place of spouse's birth, date and place of marriage, and, if applicable, date and place of divorce, and current or last known address and telephone number of each former spouse:

Bertha Rebeldia Lage Machado *name of spouse*	[redacted] *date/place of birth*	Camaguey, Cuba
Deceased *full address including Zip code*		n/a *telephone number, including area code*
app. 1949 Brooklyn, New York app. 1963 Miami, Florida *date/place of marriage*	app. 1960 app. 1972 *date/place of divorce*	Havana, Cuba Miami, Florida

María del Rosario Fernández de la Peña *name of spouse*	[redacted] *date/place of birth*	Havana, Cuba
[redacted] *full address including Zip code*		[redacted] *telephone number, including area code*
09/15/61 Havana, Cuba *date/place of marriage*	[redacted] *date/place of divorce*	Havana, Cuba

See Continuation Page "Answers to Questions."

7. List your children by name and furnish date and place of birth for each:

(If you do not have custody of any minor children, indicate whether you pay child support.)

Vilma Ena Fuentes Angulo *name of child*	[redacted] *date/place of birth*	New York, New York
*Vivian Elena Fuentes Verble *name of child*	[redacted] *date/place of birth*	Brooklyn, New York born: Havana, Cuba
Fernando Fuentes Fernández *name of child*	[redacted] *date/place of birth*	

See Continuation Page "Answers to Questions."

8. List the complete address of all schools you have attended since your conviction, beginning with the most recent and working backward. Indicate the type of degree/diploma received and give the name of an instructor, counselor, or other school official who knew you well. (An optional continuation page is provided if necessary.)

School None	*From (month/year)*	*To (month/year)*
Number and Street	*Degree*	*Month/year awarded*
City	*State*	*Zip Code*
Name of school official	*Telephone number of school official*	

8a. See Attachment B.

Residences

9. List every place you have lived since the conviction, beginning with the present and working back. *(All periods must be accounted for below.)* List the physical location of your residence; do not use a post office box as an address. If you lived in an apartment complex, list your apartment number. (An optional continuation page is provided if necessary.)

manent	*Date you moved to present address (month/year):* 1988	*Number and Street* [redacted]		*Apartment Number*
		City Cancún, Quintana Roo	*State* Mexico	*Zip Code* [redacted]
porary	*From (month/year):* 1988	*Number and Street* [redacted]		*Apartment Number*
	To (month/year): 2000	*City* la Habana	*State* Cuba	*Zip Code*
manent	*From (month/year):* 1986	*Number and Street* [redacted]		*Apartment Number*
	To (month/year): 1988	*City* Cancún, Quintana Roo	*State* Mexico	*Zip Code* [redacted]

See Continuation Page "Answers to Questions."

Employment History

10. List all periods of employment and unemployment since the conviction, beginning with the present and working backward. List all full and part-time work, self-employment, and periods of unemployment. For each period of unemployment, indicate your means of support. (An optional continuation page is provided.)

Present Employer: Retired, but consults periodically (see below)			Telephone (include area code)
Date you began this employment (month/year): 2000	Number and Street		
	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer: Viajes Divermex			Telephone (include area code) [redacted]
Began (month/year): 1988	Number and Street [redacted]		
Ended (month/year): 2000	City: Cancún	State: Quintana Roo 77500	Zip Code: México
Type of business: travel agency	Position: Consultant	Supervisor: n/a	Supervisor's telephone number: n/a

Employer: Maeva Travel			Telephone (include area code): unknown
Began (month/year): 1986	Number and Street [redacted]		
Ended (month/year): 1988	City: Cancún	State: Quintana Roo 77500	Zip Code: México
Type of business: travel agency	Position: Consultant	Supervisor: n/a	Supervisor's telephone number: n/a

(a) Since the conviction, have you been fired or left a job following allegations of misconduct or unsatisfactory job performance? ☐ yes ☒ no

(b) Have you failed to list the conviction, or any other arrest or conviction, on any employment or other application where requested to list such information? ☐ yes ☒ no

If you answered yes to either of the above questions, explain fully below. An optional continuation page is provided.

Substance Abuse and Mental Health Information

11. (a) Have you ever used any illegal drug or abused prescription drugs or alcohol? ☐ yes ☒ no
If you answered yes, on a separate sheet identify the drugs used, the dates of use, and the frequency of use.

(b) Have you ever been involved in the illegal sale or distribution of drugs? ☐ yes ☒ no
If you answered yes, on a separate sheet provide complete details and dates of your involvement.

(c) Have you ever sought or participated in counseling, treatment, or a rehabilitation program for drug use or alcohol abuse? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment or counseling, and provide the name, full address, and telephone number of the treatment facility and of the doctor, counselor or other treatment provider.

(d) Have you ever consulted with a mental health professional (psychiatrist, psychologist, or counselor) or with another health care provider concerning a mental health-related condition? ☐ yes ☒ no
If you answered yes, on a separate sheet specify the dates of treatment and the name, full address, and telephone number of the counselor/treatment provider.

Civil and Financial Information

12. (a) Are you in default or delinquent in any way in the performance or discharge of any debt or obligation imposed upon you? ☐ yes ☒ no

(b) Since the conviction, have any liens (including federal or state tax liens) or any lawsuits been filed against you, or have you filed for discharge of your debts in bankruptcy? ☐ yes ☒ no

(c) Do you have pending any judicial or administrative proceedings with the federal, state, or local governments? ☒ yes ☐ no

If you answered yes to any question, explain fully on the optional continuation page.

Military Record

13. (a) Have you ever served in the armed forces of the United States? ☒ yes ☐ no

Dates of service: 1945-1947 Branch(es): US Army

Serial numbers: 42283019 Type of discharge: Honorable

Decorations (if any): World War II Victory Medal-Europe Theater of Operation

If other than honorably discharged, specify type and circumstances surrounding your release(s) (use optional continuation page) and attach copy of your separation papers (Form DD-214.

(b) While serving in the armed forces, were you the recipient of non-judicial punishment or the defendant in any court-martial? ☐ yes ☒ no

If yes, state fully the nature of the charge, relevant facts, disposition of the proceedings, the date thereof, and the name and address of the authority in possession of the records thereof. If you were convicted of an offense by court-martial, provide a copy of the court-martial promulgating order and on a separate sheet provide the same information with respect to each conviction that is required in questions 2 through 4 of this application.

Civil Rights and Occupational Licensing

14. Have you ever been granted or denied restoration of your civil rights (for example, a state pardon, a certification of restoration of civil rights, or a certificate of discharge)? ☐ yes ☒ no
Attach a copy of the document(s) evidencing the state's action.

15. Have you ever been granted or denied removal of your federal or state firearms disabilities?
Attach a copy of the document(s) evidencing the federal or state action. ☐ yes ☒ no

16. Since the conviction, have you been granted or denied any type of business or professional license, including the reinstatement of any licenses that were revoked or denied, in which your conviction was a consideration? ☐ yes ☒ no

If yes, attach a copy of the document(s) evidencing the action, including any explanation of the reasons for such action. If not available, provide the name, full address, and telephone number of the relevant authority taking the action, the nature of the license, the disposition of your request, and the date of the disposition. Use optional continuation page if necessary.

Reasons for Seeking Pardon

17. State your reasons for seeking a pardon. Please refer to paragraphs 4 and 11 in the attached Information and Instructions on Pardons. (As pointed out in paragraph 10 of the attached instructions, a pardon is a sign of forgiveness. Accordingly, in the usual request for pardon you should not reargue your case, assert innocence, or otherwise attack the validity of your conviction.)

See attachment C.

Certification and Personal Oath

I hereby certify that all answers to the above questions and all statements contained herein are true, and I understand that any misstatements of material facts contained in this petition may cause adverse action on my petition for pardon, in addition to subjecting me to any other penalties provided by law.

In petitioning the President of the United States for pardon, I do solemnly swear that I will be law-abiding and will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I take this obligation freely and without any mental reservation whatsoever, So Help Me God.

Respectfully submitted this _____ day of _____, 19_____.

Hernando Fuentes
(signature of petitioner)

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I authorize any investigator, special agent, or other duly accredited representative of the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, criminal history, arrest, conviction, medical, psychiatric/psychological, health care, and financial and credit information.

I understand that, for financial or lending institutions and certain other sources of information, a separate specific release may be needed (pursuant to their request or as may be required by law), and I may be contacted for such a release at a later date.

I further authorize the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my suitability for a government benefit.

I authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this form, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for three (3) years from the date signed.

Signature (sign in ink) Fernando Fuentes	
Full Name (type or print legibly) Fernando Fuentes Coba	*Date Signed*
Other Names Used Fred Fuentes, Fred Fuentes Coba, Fernando Fuentes	
Street Address [redacted]	
City [redacted]	*State* Mexico [redacted]
Home Telephone Number (include area code) [redacted]	*Social Security Number* [redacted]

Optional Continuation Page for Petition for Pardon After Completion of Sentence

Residences

From (month/year):	Number and Street		Apartment Number
1986	[redacted]		
To (month/year):	City	State	Zip Code
1988	La Habana	Cuba	

From (month/year):	Number and Street		Apartment Number
1982	[redacted]		
To (month/year):	City	State	Zip Code
1985	Miami	FL	

From (month/year):	Number and Street		Apartment Number
To (month/year):	City	State	Zip Code

From (month/year):	Number and Street		Apartment Number
To (month/year):	City	State	Zip Code

Employment History

Employer			Telephone (include area code)
n/a			
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Optional Continuation Page for Petition for Pardon After Completion of Sentence

Residences

From (month/year):	Number and Street	Apartment Number
To (month/year):	City	State	Zip Code

From (month/year):	Number and Street	Apartment Number
To (month/year):	City	State	Zip Code

From (month/year):	Number and Street	Apartment Number
To (month/year):	City	State	Zip Code

From (month/year):	Number and Street	Apartment Number
To (month/year):	City	State	Zip Code

Employment History

Employer n/a			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Employer			Telephone (include area code)
Began (month/year):	Number and Street		
Ended (month/year):	City	State	Zip Code
Type of business	Position	Supervisor	Supervisor's telephone number

Optional Continuation Page for
Petition for Pardon After Completion of Sentence

Answers to Other Questions

Question #	*Response:*
3	I was free on bail during my trial and during the appeal and other post-conviction motions. Fearing retaliation in prison (including personal injury and death) from anti-Castro groups at that time, I did not surrender in 1985 to serve my prison sentence. Instead, I believed I had to leave my country to save my life.
	The District Court judgment is attached hereto as Attachment E. The Eleventh Circuit Court of Appeals affirmed the judgment on August 13, 1984. See 738 F.2d 1191 (11th Cir. 1984). The Supreme Court denied my petition for a writ of certiori. See 469 U.S. 1213 (1985).
	In April 1982, prior to my conviction, the U.S. Government blocked all my assets (including my funds), rendering me unable to pay the $10,000 fine.
6	Yolanda Parces García [redacted] Cuba Miami, Florida unknown 04/20/77 Miami, Florida [redacted] Miami, Florida
6	Magaly del Pilar Linares Conde [redacted] Havana, Cuba [redacted] Havana, Cuba unknown 11/28/84 Havana, Cuba [redacted] Havana, Cuba
6	Georgina Leon [redacted] Havana, Cuba [redacted] Cancún, Quintana Roo 77500, México [redacted] 10/15/94 Cancún, México [redacted]
7	Barbara Fuentes [redacted] Miami, Florida
7	Jeanie Fuentes [redacted] Miami, Florida
7	Sara Ena Fuentes Linares [redacted] Havana, Cuba
12(c)	The criminal case stemming from my 1982 conviction is still pending.

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

CHARACTER AFFIDAVIT

on behalf of

Fernando Fuentes Coba
(print or type name of petitioner)

In support of the application of the above named petitioner to the President of the United States for pardon, I, Thomas L. Cooper
(print or type name of affiant)

residing at [redacted]
Number Street City State Zip Code

[redacted], whose occupation is President and Chief Executive Officer, Gulfstream International Airlines, Inc.
Telephone (include area code)

certify that I have personally known the petitioner for 20 years. Except as otherwise indicated below, petitioner has behaved since the conviction in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether the petitioner has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows:

I first met Mr. Fernando Fuentes Coba in the late 70s when he first began operating charter flights between Miami and Havana and was the owner of a company by the name of American Airways Charters. I, too, had a company, Air Miami, Inc., which also flew charter flights between Miami and Havana. For the next several years, Mr. Fuentes Coba and I had numerous business transactions relative to that market which complemented each other's business. During that period of time, both on a personal level and a business basis, I found Mr. Fuentes Coba to be honest and truthful in his dealings with me. He was highly respected in the aviation community during that period of time.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

(signature of affiant)

Subscribed and sworn to before me this 5th day of September, 2000

NOTARY PUBLIC - STATE OF FLORIDA
ELIZABETH ANN LERNER
COMMISSION # CC609561
EXPIRES 1-13-2001
BONDED THRU ADA 1-800-HOTARY1

Notary Public

United States Department of Justice
Office of the Pardon Attorney
Washington, D.C. 20530

CHARACTER AFFIDAVIT

on behalf of

Fernando Fuentes Coba
(print or type name of petitioner)

In support of the application of the above named petitioner to the President of the United States for pardon, I, Marilyn J. Parker
(print or type name of affiant)

residing at [redacted]
Number Street City State Zip Code

[redacted]
Telephone (include area code)

, whose occupation is Consultant

certify that I have personally known the petitioner for 4 years. Except as otherwise indicated below, petitioner has behaved since the conviction in a moral and law-abiding manner. My knowledge of petitioner's reputation, conduct and activities, including whether the petitioner has been arrested or had any other trouble with public authorities and has been steadily employed, is as follows:

I have known Mr. Fuents since 1996, Although frail with health problems. I find him to be a dedicated family man longing to spend his last days with his children.

Mr. Fuentes is a kind and compasionate man, totally dedicated to helping the less fortunate whether they be friends or strangers.

Mr. Fuentes is an honest and respectable man.

I do solemnly swear that the foregoing information is true and correct to the best of my knowledge and belief.

Marilyn J. Parker
(signature of affiant)

Subscribed and sworn to before me this 13 day of Sept. 19 00

Ronald R. Montfort
Notary Public

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RONALD R MONTFORT
Notary Public, District of Columbia

RONALD R MONTFORT
Notary Public

UNITED STATES DEPARTMENT OF JUSTICE
Office of the Pardon Attorney
Washington, D.C. 20530

CHARACTER AFFIDAVIT

In support of the application of the Petititoner FERNANDO FUENTES COBA to the President of the United States for a pardon:

I Cesar R. Camacho, residing at 145 Harbor Drive, Key Biscayne, Florida 33149, attorney at law, admitted to practice as follows: State of Florida, all courts; United States Supreme Court; 5th Circuit Court of Appeals; 11th Circuit Court of Appeals; United States Tax Court; United States District Court for the Southern District of Florida (& Trial Bar); United States Bankruptcy Court for the Southern District of Florida; United States Court of Claims, (Washington D.C.), certify:

That I have personally known the Petitioner for 30 years and the Petitioner has since been a person of excellent moral character and a law abiding citizen, except for the matter for which a pardon is sought. To the best of my knowledege and belief, the Petitioner enjoys an immaculate reputation within his peers, has not been arrested for any cause nor has he been involved on any other kind of trouble, has not been a defendant in any civil or criminal action and has been steadily employed (until his recent retirement) in the travel business, as a remunerated consultant. The Petitioner is now retired. The Petitioner's conduct and activities during this time have been consistent with those expecetd from a hard-working, honest, family man.

Cesar R. Camacho

Sworn to and subscribed before me in the City of Miami, County of Miami-Dade, State of Florida, on this 11 day of September, 2000.

Notary Public

Notary Public Rubber Stamp

OFFICIAL NOTARY SEAL
SILVIA DIAZ
COMMISSION NUMBER
CC739850
MY COMMISSION EXPIRES
MAY 27,2002
NOTARY PUBLIC STATE OF FLORIDA

ATTACHMENT A
TO PARDON APPLICATION OF
FERNANDO FUENTES COBA

Offenses For Which Pardon Is Sought (Pages 1-2)

4. Description of Offenses

Please refer to Attachment B for a brief discussion of my life, my family, and my work. Attachment B also discusses the travel restrictions under the then existing Cuban Assets Control Regulations ("CACR"), which were promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC").

The Government's actions against me began on February 11, 1982, when the Grand Jury returned an indictment against AAC and two other companies. The indictment charged these corporations with receiving money from U.S. persons seeking to provide funds to Cuba during the Mariel Boatlift. The Government, however, did not pursue these charges.

Instead, on February 24, 1982, a superseding indictment (the "second indictment") was filed charging me, seven other individuals, and four companies (including AAC) with conspiracy to violate The Trading With The Enemy Act. Seven of the defendants failed to appear in the case and fled the country. These seven defendants were: Carlos Alfonso Gonzalez, Charles Romeo, Roger Dooley, Jorge Debasa, Miriam Contreras Ropert, Lourdes Rey Gonzalez-Dopico, and Orestes Damian Aleman. Instead of trying these individuals in absentia, the Government sought a third indictment against me alone on May 19, 1982. The Government subsequently dismissed the second indictment.

The third indictment charged three counts against me: (I) conspiracy to transport goods and equipment to Cuba; (II) conspiracy to engage in transactions on behalf of Cuban nationals traveling in the United States without a visa issued by the Department of State; and (III) purchasing and selling assets of Travel Services, Inc., a transaction for which AAC requested OFAC authorization, without a license from OFAC in violation of the CACR. With respect to count I, the Government alleged that I improperly transported to Cuba four Pepsi-Cola dispensing machines, communications equipment, a typewriter, a photocopier, scuba equipment, a small airplane part, automobile parts, food, perfume, and U.S. coins.

The Government eventually dismissed counts II and III of the indictment without prejudice. In November 1982, the Government tried only count I of the third indictment. After a four-day trial before the U.S. District Court for the Southern District of Florida, I was convicted of conspiracy to violate The Trading With The Enemy Act and the CACR. I was sentenced to one year in prison and was ordered to pay a fine of $10,000. The United States Court of Appeals for the Eleventh Circuit affirmed the conviction on August 13, 1984. See 738 F.2d 1191 (11th Cir. 1984). The Eleventh Circuit then denied an application for en banc consideration, and on February 19, 1985, the U.S. Supreme Court denied my petition for a writ of certiorari. U.S. 1213 (1985).

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Attachment A
To Pardon Application
Of Fernando Fuentes Coba

On June 14, 1985, a Motion for Relief Under Rule 35 of the Federal Rules of Criminal Procedure was filed with the District Court for the Southern District of Florida. This court denied the motion on June 21, 1985.

ATTACHMENT B
TO PARDON APPLICATION OF
FERNANDO FUENTES COBA

Biographical Information (Page 3)

8A. Fernando Fuentes Coba's Background

I was born on June 21, 1928 in Cuba. I left Cuba for the United States in the mid 1940's. To support my application for United States citizenship, I joined the United States army. I trained with the Field Artillery at Fort Knox in Kentucky. While at Fort Knox, I was recommended as a candidate for officers' training. I, however, chose not to attend officers' school but instead to serve in the Second Constabulary Regiment in Germany during World War II. I received an honorable discharge after eighteen months of service.

When I returned to the United States after the war, I obtained a job in a lithography shop in New York. I remained in New York until 1959. Believing that Cuba had changed after the revolution and hoping that the climate would improve the health of my oldest daughter Vilma, I moved my wife Bertha and my two girls Vilma and Vivian to Cuba. It was only after we arrived in Cuba that I realized the extent to which my family missed their friends and other family members. I also discovered that Cuba was not what I had expected.

After a year in Cuba, I began making arrangements for our departure. At that time, because of my position with the police in Cuba, I was not free to leave Cuba with my family. The only way for Bertha and children to leave Cuba was for me to obtain a divorce. As soon as my divorce was effective in approximately 1961, Bertha and the children left Cuba. I finally was able to depart for Canada in 1962. In 1964, I walked across the Canadian-United States border into Maine, where I turned myself in to the U.S. Immigration and Naturalization Service ("INS") and requested political asylum.

In 1969, INS determined that I was eligible for naturalization. I became a U.S. citizen that year, and I remain a U.S. citizen today. Because of my departure in the 1940's and in 1962, I do not believe that Cuba considers me a Cuban citizen.

I settled with my family in southern Florida, where I worked as a manager of a lithography shop for approximately ten years. I eventually changed jobs after the U.S. Government amended its Cuba travel policies.

In 1977, President Carter directed the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") to remove most, if not all, restrictions on the travel to Cuba. Pursuant to President Carter's direction, OFAC amended the Cuban Assets Control Regulations ("CACR") to permit persons subject to U.S. jurisdiction ("U.S. persons") to engage in all transactions ordinarily incident to travel to, from, and within Cuba. The amended CACR also permitted U.S.-owned companies to assist U.S. persons with their travel arrangem from, and within Cuba. Thus, after 1977, U.S. law permitted U.S. persons to travel to

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Cuba and U.S. companies to provide travel-related services (including charter services). U.S. law also permitted U.S. persons to pay for ordinary travel expenses in Cuba and permitted U.S. companies to engage in transactions with Cuba on behalf of the U.S. travelers.

American tourists flocked to Cuba after OFAC amended the CACR. In 1979 alone, 189,000 Americans traveled to Cuba, spending between $150 and $185 million on transportation, hotels, and other tourist activities. As mentioned above, U.S. law permitted these transactions.

Because the changes in the law created new opportunities in the travel business, I decided to leave my job at the lithography shop and enter the charter business. In mid-1978, I purchased a Florida company called American Airways Charters, Inc. ("AAC"). I was the president and chief operating officer of AAC. Late in 1978, AAC initially began operating charter flights between Miami, Florida and Kingston, Jamaica.

In 1979, in accordance with the amended CACR, AAC began arranging charter flights between Miami and Havana, Cuba. As part of AAC's Cuba travel business, AAC leased aircraft from airlines for the flights to and from Cuba, hired and supervised security personnel to ensure the safety of the aircraft and the baggage loaded on board the aircraft, and completed and filed all required documentation with the appropriate government agencies. AAC eventually became a major charter operator arranging charter air transportation between Miami and points in Cuba.

As you are no doubt aware, the Mariel Boatlift created an immigration crisis in the United States. On April 20, 1980, Fidel Castro announced that Cubans could leave the country, and he opened the port of Mariel for all persons wishing to depart Cuba for the United States. Cuba permitted boat loads of Cubans (including criminals) to travel to the United States. Faced with thousands of Cubans entering the United States, President Carter announced his policy of providing a safe-haven for displaced persons from Cuba.

It soon became apparent that the United States could not handle the influx of Cuban emigrants. In May 1980, President Carter attempted to halt the boatlift. Despite his efforts, over 120,000 Cubans arrived in the United States.

Under President Reagan, the U.S. Government changed its policy toward Cuba and began to tighten the embargo. In 1982, OFAC amended the CACR to restrict travel to Cuba. OFAC also began more strictly enforcing the CACR. Significantly, this stricter enforcement included retrospective examination of transactions that had occurred prior to the Mariel Boatlift during the years when the United States had relaxed the embargo against Cuba.

ATTACHMENT C
TO PARDON APPLICATION OF
FERNANDO FUENTES COBA

Reasons For Seeking Pardon (Page 6)

17. Reasons

There are several reasons why it is appropriate to grant me a pardon and allow me to return home to the United States without serving time in prison. These reasons are listed in paragraphs (A) through (H) below.

A. I Need Immediate Medical Care In The United States

The first is humanitarian: My health has substantially deteriorated since the indictment and conviction. I am now 72 years old, and I unfortunately have suffered numerous health problems over the years, including coronary heart disease, two abdominal aortic aneurysms, emphysema, and diabetes. Each of these illnesses alone is extremely serious.

In 1992, my doctors discovered two aneurysms on my abdominal aorta. These are life-threatening conditions, which required immediate surgery. I underwent triple bypass surgery, which was very complicated and very risky. To bypass the aneurysms in my arteries, I had repairs performed to the abdominal aorta and the left and right iliac arteries. Because the aneurysms caused the spinal column to erode, I also had repair work performed on my lower spinal column.

Despite these surgical procedures, I continue to suffer from coronary heart disease. In late 1998, I suffered a stroke in the front left lobe of the brain. In 1999, I went into a near diabetic coma and suffered severe depression. With 80 percent of my carotid arteries blocked, I risk another debilitating and potentially fatal stroke.

I would like to be treated and to have any additional surgery performed in the United States, where I can receive the very best medical attention. Even after such treatment is completed, I expect that I will continue to require medical attention for this and other medical conditions. My family has the financial means to absorb the enormous expense of medical treatment in the United States. Allowing me to obtain medical care and other treatment in this country, therefore, will not impose any financial burden on public authorities.

B. The Historical Factors That Led To My Indictment Are No Longer Present

As can be seen from Attachment A, I was indicted in 1982 as part of the U.S. Government's response to the Mariel Boatlift. While the Government was attempting to control and process the Cuban émigrés from the Boatlift, the Office of Foreign Assets Control ("OFAC") instituted a stricter enforcement policy. As a result of this policy, my comp

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was originally charged with forwarding money to Cuba to assist in the transportation of Cuban nationals to the United States. The Government's second indictment and third indictment also included charges of profiting from the Mariel Boatlift. However, the Government ultimately dismissed the second indictment as well as the count in the third indictment alleging this activity.

The shipping activities for which I was indicted and convicted allegedly occurred in 1979, prior to the Mariel Boatlift, the event that triggered the indictments. If the Mariel Boatlift had not occurred, it appears as though the Government would not have prosecuted me for these shipping activities. And even though the Mariel Boatlift triggered this prosecution, the Government never brought me to trial on any charge related to the Mariel Boatlift. (Nor should they have done so.) Instead, the Government pursued a questionable charge that I conspired to transport certain goods to Cuba in violation of OFAC's Cuban Assets Control Regulations (the "CACR").

Twenty years have passed since the Mariel Boatlift incident. With the U.S.-Cuba Immigration Accord, the pressing need to gain control over Cuban immigrants is no longer present. Moreover, the political climate between the United States and Cuba has changed. Cuba is not as formidable as it once was when it received subsidies from the former Soviet Union. The U.S. Department of Defense recently has concluded that Cuba is no longer a threat to the United States. In addition, an increasing number of U.S. citizens (including State and Federal government officials) are calling for a lifting of the U.S. embargo against Cuba and for improved relations with the island. While relations between the United States and the Cuban Governments have remained stagnant for the last twenty years, the policy reasons for retroactively examining AAC's activities and selectively prosecuting me no longer exist.

C. The Alleged Activities Did Not Pose A Threat

Even if it were true that I intentionally violated The Trading With The Enemy Act and the CACR, the alleged activities did not pose any threat to the United States or to its citizens. I was not charged with and convicted of selling arms, munitions, or military secrets to the "enemy;" I was convicted of allegedly transporting to Cuba four old Pepsi-Cola dispensing machines, communications equipment, a typewriter, a photocopier, scuba equipment, a small airplane part, automobile parts, food, perfume, and quarters. None of these commodities posed any threat to the United States or to its citizens. Nor did they provide Cuba with a significant amount of hard currency that the Castro Government could use against U.S. interests.

D. The Government Appears To Have Selectively Prosecuted Me

The Government's second indictment charged eight individual defendants, including me, with conspiracy to violate The Trading With The Enemy Act and the CACR. All but one of those defendants failed to remain in the United States to stand trial. The seven defendants who fled the country were: Carlos Alfonso Gonzalez, Charles Romeo, Roger Dooley, Jorge Debasa, Miriam Contreras Ropert, Lourdes Rey Gonzalez-Dopico, and Orestes Damian Aleman. Instead of trying these individuals in absentia, the Government indicted (the third indictment), tried, and convicted the only defendant who remained in the country, me.

And at the time of the trial and during the appeal, I did not intend to flee the country to escape a prison term. Only after the justice system failed me, and after I realized that I might die in prison, I left his family and country in late 1985. In other words, because the anti-Castro sentiment was so strong, and because I was convicted of "trading with the enemy" Fidel Castro, I feared that anti-Castro groups would seriously injure, maim, or kill me in prison. Given the bombings that occurred in Miami in the 1970's and 1980's (including the attempted bombing of my office), this fear was well-founded.

Even after some of the individuals who had been charged in the second indictment returned to the United States, the Government did not pursue the charges against them. In early 1983, Lourdes Rey Gonzalez-Dopico surrendered to federal authorities, but was not prosecuted. Orestes Damian Aleman also surrendered to the authorities, and the Government dismissed the indictment against him. Additionally, OFAC issued a license to Mr. Aleman's new company authorizing the company to provide travel-related services and family remittance forwarding services to Cuba.

E. I Have Cooperated With Government Officials

During OFAC's investigation of Travel Services and other entities in 1979, I fully cooperated with the Government. I provided OFAC officials with all the documentation they requested. Moreover, I met with OFAC officials on November 20, 1979 in connection with their investigations.

In addition, I cooperated with the U.S. Attorney's office on a different matter after my conviction: the Arocena case (United States v. Arocena, No. 83-1016-Cr (S.D. Fla.)). In 1980, Eduardo Arocena, the leader of the anti-Cuba terrorist organization Omega 7, was responsible for placing a bomb in my office. I discovered the bomb and contacted the police – before it detonated. My employees and I narrowly escaped serious physical injury or death.

During the trial of Arocena, which occurred after I had had been tried and convicted, I testified on behalf of the Government. Assistant U.S. Attorney Frederick R. Mann commended me for my cooperation in the Arocena prosecution, stating that I "was forth coming and candid at all times during the preparation of the trial, and was of substantial assistance in proving that part of the government's case against Arocena having to do with the attempted bombing of my office in December of 1980." See Letter from Frederick R. Mann to Honorable James W. Kehoe, dated April 26, 1985 (attached hereto as Attachment D).

F. I Already Have Been Punished For These Alleged Activities

I already have been punished for the acts for which I was charged. I will never be able to forget the charges against me or forget my conviction. Because of the hostile environment in Miami at the time of the indictment (a time when bombings were frequent), I have suffered the loss of my integrity and reputation.

In addition, OFAC, on April 9, 1982, declared that AAC was a "Cuban national" under the regulations, thereby preventing all U.S. persons from doing business with AAC. OFAC also

seized AAC's assets and ordered the company to cease its tour operations. Thus, not only was I convicted for supposedly shipping goods to Cuba, I also was forced to shut down my business.

As a result of the negative publicity and the anti-Castro sentiment in Miami, I feared retaliation in prison. This fear was not unfounded, given the views of some of the Miami community against those who did business – even if authorized under the regulations – with Cuba. As stated above, my employees and I narrowly escaped injury and possibly death from the attempted bombing of my office in December 1980 – before my indictment. Other bombings in Miami and New York caused the deaths of several individuals. After I was convicted of "trading with the enemy", fears for my safety increased dramatically. Because I believed I could not be protected in any U.S. prison, I left my home, my family, and my country.

I have been away from my family and friends for fifteen years. My fifteen-year "isolation" has far exceeded my prison sentence. The separation from my family, coupled with the loss of my business, is a far greater punishment than incarceration.

G. The Case Against Me Was Weak

In addition to the above-mentioned reasons warranting clemency, there is reasonable doubt as to my guilt. For a crime to be committed under The Trading With The Enemy Act and the CACR, the Government must show that the defendant actually knew of the regulatory provisions and intentionally violated the regulations. United States v. Frade, 709 F.2d 1387, 1392 (11th Cir. 1983).

In the case against me, the Government's proof of intent was based almost entirely on the testimony of Jenaro Perez. Perez was an admitted member of the extreme anti-Castro organization Moviemento Insurrecional Martiano. Perez gave inconsistent and uncorroborated testimony about the alleged shipment of goods to Cuba. Specifically, Perez testified that my company AAC transported to Cuba four old Pepsi-Cola machines, communications equipment, a typewriter, a photocopier, scuba equipment, a small airplane part, automobile parts, food, perfume, and quarters. Perez also testified that I knew that the transportation to Cuba of these goods was illegal and that I personally supervised the loading of these goods onto the aircraft chartered by AAC. Perez, however, later testified that he (Perez) purchased the communications equipment for exportation to Cuba. He also admitted that he did not know whether AAC transported office equipment and scuba equipment to Cuba. Other witness who worked at the airport, moreover, contradicted his testimony, when they testified that they did not see any of the alleged items being loaded onto the Cuba flights. The other witnesses, furthermore, testified that I did not know and was not present at the airport when any of the alleged shipments were loaded onto the aircraft.

Interestingly, Perez admitted on cross examination to violating the CACR when he purchased the communications equipment for Cuba. Although the Government offered him immunity for his testimony, he refused to accept the offer. Yet, despite Perez's admission, and despite the fact that he did not have an agreement with the Government for his testimony, the Government did not prosecute Perez. I was the only one who was tried for violating the law.

Perez's motives and illegal conduct as well as his perjury at trial rendered his credibility at best questionable. This raised doubts as to this key element of the Government's case against me.

The Government's own actions also demonstrated that AAC did not knowingly violate the CACR. Beginning in 1979, the U.S. Customs Service watched the charter flights that AAC arranged for U.S. persons traveling to Cuba. AAC notified Customs of every flight, and Customs cleared every departure to and arrival from Cuba. Although Customs monitored every flight, Customs agents did not interfere with the flights or seize any of the allegedly improper shipments. I, therefore, had no idea that any shipments might have violated the CACR.

Furthermore, some Government witnesses testified that goods were allegedly shipped to Cuba at the request or for the benefit of Havanatur, a Panamanian corporation. Yet, the Government alleged that these shipments took place before OFAC designated Havanatur as a "Cuban national." This designation made it illegal for U.S. persons to do business with Havanatur. Even if my company was responsible for the shipments, I could not have intended to violate the CACR by engaging in illegal transactions with Havanatur, because I did not know that it was illegal to conduct business with Havanatur.

H. <u>My Counsel Failed to Effectively Represent Me</u>

A novice attorney represented me during the Government's case. Unfortunately, my attorney failed to raise several key objections that related to the evidence brought against me and to the court's procedures. The Eleventh Circuit Court of Appeals upheld my conviction in large part because the attorney waived various objections. The Eleventh Circuit's decision (738 F.2d 1191 (1984)) explains these waivers.

FILED RECEIVED
MAY '85 MAY 06 85

U.S. Department of Justice

United States Attorney
Southern District of Florida

ATTACHMENT D

FRM7:kg

153 South Miami Avenue, Suite 700
Miami, Florida 33130

April 26, 1985

Honorable James Kehoe
United States District Court Judge
U.S. Federal Courthouse
301 North Miami Avenue
8th Floor
Miami, Florida 33130

Re: United States of America v. Fernando Fuentes-Coba
Case No. 82-248-Cr-JWK

Dear Judge Kehoe:

The above referenced defendant is scheduled to shortly surrender to begin a one (1) year sentence at Eglin Air Force Base, pursuant to his conviction for trading with the enemy in Case No. 82-248-Cr-JWK.

I have been asked by his attorney to write you this letter, to acknowledge that Mr. Fuentes-Coba was a witness for the government in the case of United States of America v. Eduardo Arocena, Case No. 83-1016-Cr-HOEVELER.

Mr. Fuentes-Coba was forth coming and candid at all times during the preparation of the trial, and was of substantial assistance in proving that part of the government's case against Arocena having to do with the attempted bombing of the office of Fuentes-Coba in December of 1980.

Very truly yours,

STANLEY MARCUS
UNITED STATES ATTORNEY

BY: /s/ Frederick Mann
FREDERICK R. MANN
ASSISTANT UNITED STATES ATTORNEY

cc: Joel Cohen, Esquire
Attorney for Defendant
Fernando Fuentes-Coba

Strook, Strook and Lavan
Attorneys at Law
7 Hanover Square
New York, New York 10004

EXHIBIT
26

000026

United States District Court for

d States of America vs.

ENDANT FUENTES-COBA, FERNANDO — SOUTHERN DISTRICT OF FLORIDA

DOCKET NO. 82-248-CR-JWK

ATTACHMENT

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: DEC. DAY: 14, YEAR: 82

OUNSEL
[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
[X] WITH COUNSEL JAMES McMASTER, ESQ. (Name of counsel)

PLEA
[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY
as charged in the indictment.

INDING & UDGMENT
There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.
Defendant has been convicted as charged of the offense(s) of
Ct. 1 - Conspired to transport goods and equipment to Cuba, in violation of Title 18, U.S.C., Section 371.

SENTENCE OR ROBATION ORDER
The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE (1) YEAR confinement. It is further

ORDERED AND ADJUDGED that the defendant pay a fine of TEN THOUSAND DOLLARS ($10,000.) It is further

SPECIAL ONDITIONS OF ROBATION
ORDERED AND ADJUDGED that the defendant shall voluntarily surrender to the Institution designated by the Bureau of Prisons.

ADDITIONAL ONDITIONS OF ROBATION
It is additional to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

OMMITMENT RECOMMEN- DATION
The court orders commitment to the custody of the Attorney General and recommends,
that the defendant be incarcerated at Eglin, Florida.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

DEC 17 1982

000027

EXHIBIT 27

GNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

DEC 14 1982

U.S. Department of Justice

Pardon Attorney

500 First Street, N.W.
Suite 400
Washington, D.C. 20530

Lonnie Anne Pera, Esq.
Zuckert Scoutt & Rasenberger, L.L.P.
888 Seventeenth Street, N.W.
Washington, D.C. 20006-3309

Dear Ms. Pera:

This is in reference to your letter of October 4, 2000, forwarding to this office at the request of your client, Ms. Vivian Mannerud, the application for presidential pardon submitted by Ms. Mannerud's father, Mr. Fernando Fuentes Coba. Mr. Coba's petition recounts that he was convicted of conspiring to transport goods and equipment to Cuba and was sentenced to a one-year prison term and a $10,000 fine, that following the exhaustion of his appeals, he failed to surrender to serve his sentence, and that in 1985, he fled the United States for Mexico, where he has lived ever since.

I must inform you that under the regulations governing petitions for executive clemency and the well-established policies under which this office processes clemency requests, Mr. Coba is ineligible to apply for a presidential pardon. Pursuant to 28 C.F.R. § 1.2 (copy enclosed), "[n]o petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement . . . ." Because Mr. Coba has served none of his prison sentence, he fails to meet this most basic eligibility requirement for pardon consideration. Moreover, the Department of Justice has consistently declined to accept pardon petitions from individuals, such as Mr. Coba, who are fugitives, since the pardon process assumes the Government's ability to implement either of the President's possible decisions regarding a petition – that is, a denial of clemency as well as a grant of clemency. Put another way, it is not reasonable to allow a person to ask that the President grant him a pardon which, if granted, would have the effect of eliminating the term of imprisonment to which he has been sentenced, while at the same time insulating himself from having to serve the sentence if the pardon is denied. Finally, even if Mr. Coba were not a fugitive, his lengthy domicile outside the United States would preclude consideration of his pardon request. As a matter of well-established policy, the Department of Justice generally does not process pardon applications from non-residents of the United States because foreign residence presents significant difficulties to the conduct of the necessary background investigation into an applicant's post-conviction life.



Given the circumstances presented by Mr. Coba's case, this office is unable to process his pardon petition. We therefore will take no action upon it.

Sincerely,

Roger C. Adams

Roger C. Adams
Pardon Attorney

Enclosure

RULES GOVERNING PETITIO S FOR EXECUTIVE CLEMENCY:

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

PART I - EXECUTIVE CLEMENCY

Sec.

1.1 Submission of petition; form to be used; contents of petition.

1.2 Eligibility for filing petition for pardon.

1.3 Eligibility for filing petition for commutation of sentence.

1.4 Offenses against the laws of possessions or territories of the United States.

1.5 Disclosure of files.

1.6 Consideration of petitions; notification of victims; recommendations to the President.

1.7 Notification of grant of clemency.

1.8 Notification of denial of clemency.

1.9 Delegation of authority.

1.10 Procedures applicable to prisoners under a sentence of death imposed by a United States Court.

1.11 Advisory nature of regulations.

Authority: U.S. Const., Art. II, sec. 2; authority of the President as Chief Executive; and 28 U.S.C. §§ 509, 510.

§ 1.1 Submission of petition; form to be used; contents of petition.

A person seeking executive clemency by pardon, reprieve, commutation of sentence, or remission of fine shall execute a formal petition. The petition shall be addressed to the President of the United States and shall be submitted to the Pardon Attorney, Department of Justice, Washington, D.C. 20530, except for petitions relating to military offenses. Petitions and other required forms may be obtained from the Pardon Attorney. Petition forms for commutation of sentence also may be obtained from the wardens of federal penal institutions. A petitioner applying for executive clemency with respect to military offenses should submit his or her petition directly to the Secretary of the military department that had original jurisdiction over the court-martial trial and conviction of the petitioner. In such a case, a form furnished by the Pardon Attorney may be used but should be modified to meet the needs of the particular case. Each petition for executive clemency should include the information required in the form prescribed by the Attorney General.

§ 1.2 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least five years after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner. Generally, no petition should be submitted by a person who is on probation, parole, or supervised release.

§ 1.3 Eligibility for filing petition for commutation of sentence.

No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are available, except upon a showing of exceptional circumstances.

§ 1.4 Offenses against the laws of possessions or territories of the United States.

Petitions for executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction of the United States should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.5 Disclosure of files.

Petitions, reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for executive clemency generally shall be available only to the officials concerned with the consideration of the petition. However, they may be made available for inspection, in whole or in part, when in the judgment of the Attorney General their disclosure is required by law or the ends of justice.

§ 1.6 Consideration of petitions; notification of victims; recommendations to the President.

(a) Upon receipt of a petition for executive clemency, the Attorney General shall cause such investigation to be made of the matter as he or she may deem necessary and appropriate, using the services of, or obtaining reports from, appropriate officials and agencies of the Government, including the Federal Bureau of Investigation.

(b)(1) When a person requests clemency (in the form of either a commutation of a sentence or a pardon after serving a sentence) for a conviction of a felony offense for which there was a victim, and the Attorney General concludes from the information developed in the clemency case that investigation of the clemency case warrants contacting the victim, the Attorney General shall cause reasonable effort to be made to notify the victim or victims of the crime for which clemency is sought:

(i) That a clemency petition has been filed;

(ii) That the victim may submit comments regarding clemency; and

(iii) Whether the clemency request ultimately is granted or denied by the President.

(2) In determining whether contacting the victim is warranted, the Attorney General shall consider the seriousness and recency of the offense, the nature and extent of the harm to the victim, the defendant's overall criminal history and history of violent behavior, and the likelihood that clemency could be recommended in the case.

(3) For the purposes of this paragraph (b), "victim" means an individual who:

(i) Has suffered direct or threatened physical, emotional, or pecuniary harm as a result of the

commission of the crime for which clemency is sought (or, in the case of an individual who dies or was rendered incompetent as a direct and proximate result of the commission of the crime for which clemency is sought, one of the following relatives of the victim (in order of preference): the spouse; an adult offspring; or a parent); and

(ii) Has on file with the Federal Bureau of Prisons a request to be notified pursuant to 28 CFR 551.152 of the offender's release from custody.

(4) For the purposes of this paragraph (b), "reasonable effort" is satisfied by mailing to the last-known address reported by the victim to the Federal Bureau of Prisons under 28 CFR 551.152.

(5) The provisions of this paragraph (b) apply to clemency cases filed on or after September 28, 2000.

(c) The Attorney General shall review each petition and all pertinent information developed by the investigation and shall determine whether the request for clemency is of sufficient merit to warrant favorable action by the President. The Attorney General shall report in writing his or her recommendation to the President, stating whether in his or her judgment, the President should grant or deny the petition.

§ 1.7 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his or her attorney shall be notified of such action and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action and the warrant of commutation shall be sent to the petitioner through the officer in charge of his or her place of confinement, or directly to the petitioner if he/she is on parole, probation, or supervised release.

§ 1.8 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he has denied a request for clemency, the Attorney General shall so advise the petitioner and close the case.

(b) Except in cases in which a sentence of death has been imposed, whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within 30 days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General shall so advise the petitioner and close the case.

§ 1.9 Delegation of authority.

The Attorney General may delegate to any officer of the Department of Justice any of his or her duties or responsibilities under §§ 1.1 through 1.8.

§ 1.10 Procedures applicable to prisoners under a sentence of death imposed by a United States District Court.

The following procedures shall apply with respect to any request for clemency by a person under a sentence of death imposed by a United States District Court for an offense against the United States. Other provisions set forth in this part shall also apply to the extent they are not inconsistent with this section.

(a) Clemency in the form of reprieve or commutation of a death sentence imposed by a United States District Court shall be requested by the person under the sentence of death or by the person's attorney acting with the person's written and signed authorization.

(b) No petition for reprieve or commutation of a death sentence should be filed before proceedings on the petitioner's direct appeal of the judgment of conviction and first petition under 28 U.S.C. 2255 have terminated. A petition for commutation of sentence should be filed no later than 30 days after the petitioner has received notification from the Bureau of Prisons of the scheduled date of execution. All papers in support of a petition for commutation of sentence should be filed no later than 15 days after the filing of the petition itself. Papers filed by the petitioner more than 15 days after the commutation petition has been filed may be excluded from consideration.

(c) The petitioner's clemency counsel may request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney in support of the clemency petition. The presentation should be requested at the time the clemency petition is filed. The family or families of any victim of an offense for which the petitioner was sentenced to death may, with the assistance of the prosecuting office, request to make an oral presentation of reasonable duration to the Office of the Pardon Attorney.

(d) Clemency proceedings may be suspended if a court orders a stay of execution for any reason other than to allow completion of the clemency proceeding.

(e) Only one request for commutation of a death sentence will be processed to completion, absent a clear showing of exceptional circumstances.

(f) The provisions of this § 1.10 apply to any person under a sentence of death imposed by a United States District Court for whom an execution date is set on or after August 1, 2000.

§ 1.11 Advisory nature of regulations.

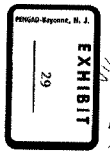
The regulations contained in this part are advisory only and for the internal guidance of Department of Justice personnel. They create no enforceable rights in persons applying for executive clemency, nor do they restrict the authority granted to the President under Article II, Section 2 of the Constitution.

Published in the FEDERAL REGISTER of the National Archives of the United States, October 18, 1993, Vol. 58, No. 199, at pages 53658 and 53659; as amended by a publication in the FEDERAL REGISTER of the National Archives of the United States, August 8, 2000, Vol. 65, No. 153, at page 48381; and as amended by a publication in the FEDERAL REGISTER of the National Archives and Records Administration of the United States, September 28, 2000, Vol. 65, No. 189, at pages 58223 and 58224, 28 CFR 1.1 *et seq.* See also 28 CFR 0.35

Draft
Pending Clemency Matters
12-10-00

I. Commutations

Name	Offense	Significant Facts	Referred/Contacted by	Status
John Adamson	Laundering proceeds of unlawful activity (1994) Sentenced to 57 months in prison and two years' supervised release (began serving in 1997 at conclusion of appeals; projected for release November 1, 2001).	As car salesman, sold vehicles for cash to an undercover agent who identified cash as proceeds from sale of cocaine.	Rec by John Sweeney (AFL-CIO)	Pending; expect denial recommendation from DOJ soon
Willie Mays Aikens	Cocaine distribution; firearm offense (sentenced to 248 months in 1994)	Substance abuse problem at time; arg that race played role b/c of crack v. powder	Former sports mgmt firm (was major league baseball player); Jim Harmon also referred (no strong rec.)	Applied Spring 2000
William Aramony	Fraud (1995) (sentenced to seven years in prison and ordered to pay $552K to United Way) (to be released some time in 2001)	Convicted for embezzling $600K as president of United Way	Vernon Jordan forwarded letter; not strong rec.	No application pending



Draft
Italics = DOJ has promised report

John Ballis	Aiding and abetting all of the following: bank fraud; bank bribery; illegal participation; conspiracy to violate federal law; misapplication by S&L employee; false entries; obstruction of justice (sentenced in 1993 to 12 ½ years and ordered to pay $4.5 M restitution; paroled in 1999)	Pled guilty to one count of making a false statement and helped convict another S&L person; later prosecuted again, for offenses he argues were covered by the original plea agreement; disparate sentencing arg.; sentencing judge who presided over plea agreement supports clemency	Atty, Don Clark of Houston, dropped of papers personally; POTUS may have been told about case as well	Applied November 2000
Ron Blackley	Failing to disclose income on SF 278; sentenced by Judge Lamberth in 1998 to 27 months (to be released October 2001)	Was COS to Sec'y Espy; prosecuted by IC investigating Espy	Harvey Joe Sanner and Mrs. Blackley have contacted our ofc., POTUS was approached by Sanner (we responded)	Applied in October 2000
Kenneth Michael Conley	Perjury; obstruction of justice; sentenced to 34 months in 1998	Policeman who said he didn't witness an attack by a white police officer on an undercover black police officer	Cong. Moakley advocated commutation in Fall 1999; nothing to WH since	Never applied
Billy Wayne Cox	Bank fraud (filing false loan documents) -- $600K in restitution	Primary argument is humanitarian – daughter recently committed suicide; acc. to OPA there isn't much else	Friend of Hal Hunnicutt; POTUS asked us to check out	Applied June 2000

1687

Draft
Italics = DOJ has promised report

Linda Sue Evans	1. Harboring a fugitive and possessing a weapon as a felon (S.D. NY) (1985) (5 years) 2. making false statements to purchase (4) firearms (LA) (1985) (30 years) 3. Conspiracy to bomb govt bldgs (US Capitol bombing) (DC) (5 years). Has served 15 years (has completed NY & DC sentences and is serving only LA sentence)	Obtained BA in prison, is working on master's degree; acc. to NY prosecutor, no evidence she committed violent acts, but knew it was a potential consequence of her actions; arg is that other members of capitol bombing conspiracy are now out (but unclear whether they had add'l convictions)	LA sentencing judge, NY prosecutor rec release; CBC members recommended release on parole (1996); "Release 2000" campaign (Ogletree et al)	Pending
Fernando Fuentes-Coba	Conspiracy to violate Trading with the Enemy Act/Cuban Assets Control regulations (1982) (sentenced to one year and fined $10K	Never reported to serve one-year sentence; lives in Mexico. Convicted for transporting goods (soda machines, other equipment, food, perfume) to Cuba. (note: reported in press that HRC campaign returned donation from daughter b/c of her role in drug trafficker contrib. to DNC)	Daughter is Vivian Mannerud (AR); Joe Velazquez spoke to POTUS re: case	Just applied; application forwarded to OPA.

1688

Dorothy Gaines	Conspiracy with intent to distribute crack cocaine, possession with intent to distribute crack cocaine (1995) (sentenced to 19 years 7 months and 5 years supervised release)	Similar to other "girlfriend" drug sentencing cases; then-boyfriend was driver for drug ring; kingpin sentenced to 12 years.	Sentencing judge does not object; Release 2000 campaign; DOJ has heard support from Rep. Waters and other CBC members	Pending at OPA
Bob Griffin	Bribery, mail fraud (1997) (sentenced to 48 months' imprisonment and $7,500 fine) (projected release date is July 2001)	When Speaker of MO House, received money from co-defendant (a consultant and lobbyist) in exchange for his steering clients to her. Petitioner's spouse suffered stroke and cannot care for herself.	Fmr. Cong. Alan Wheat contacts WH regularly; other rec.'s by: all Democratic members of Missouri Senate; appx. 20 members of Missouri House; former Sen. Thomas Eagleton; Congresswoman Pat Danner; various other MO state and local officials (we were told that Governor Carnahan supported clemency as well).	Commutation denial pending here
Steven M. Griggs			Daley McDaniel strongly supports; acc. To McDaniel, Roger Clinton also supports	Pending at OPA

1689

Peter MacDonald	1. Racketeering; racketeering conspiracy; extortion by Indian tribal official; mail fraud; wire fraud; interstate transportation in aid of racketeering (1992) (60 months' imprisonment, $1.5M restitution to Navajo Nation, fined $10K) 2. Conspiracy to commit kidnapping; third degree burglary (1993) (175 months' imprisonment, $4,431 restitution to Nation, $5K fine) (projected release date is October 2005)	Completed serving first sentence and now serving second. First petition denied by POTUS in 1996. Navajo Nation Council has pardoned petitioner. Second conviction arose out of petitioner's refusal to relinquish position as tribal official (put on administrative leave in light of investigation that led to 1st conviction); gathered "security force" armed with clubs, attempted takeover of tribal govt. bldg., ordered kidnapping of a policeman. Riot ensued – several were injured and two demonstrators were killed.	Representatives of Navajo Nation have advocated strongly for release; Rep. Udall; Brian Greenspun; Sen. Bingaman has spoken to POTUS about case	Commutation denial pending here. Navajo Nation has been discussing possible transfer w/ BOP; if issues w/AZ govt are resolved, DOJ believes transfer will occur. Nation still advocating for his release.

1690

Howard Mechanic ?`	1. Violating anti-riot act (threw explosive device at fire- and policemen trying to put out a fire ignited during Viet Nam war demonstration) (1970) (sentenced to 5 years) 2. Failure to appear; falsely obtaining passport (2000) (sentenced to 4 months' imprisonment and fined $10K (to be served concurrently with first sentence) In jail since Feb. 2000	Did not report to serve sentence (in 1972); changed identity (to Gary Tredway) and fled to AZ; decided to run for city council under fake name; true identity discovered when he ran for Scottsdale city council	Missouri state legislators; Sen. Durbin; Rep. Bobby Rush; former Sen. Thomas Eagleton; city council of University City, MO	Petition pending
Michael Monus	Conspiracy, mail fraud, wire fraud, bank fraud, transportation of stolen property (checks) (1999) (sentenced to 139 months' imprisonment, $500,000 fine, and 5 years' probation).		Monte Friedkin (to BRL)	Applied August 2000
Oscar William Olson	Illegal monetary transactions involving criminally derived property (1997) (sentenced to 121 months and $10M restitution)	73 years old; many health problems	Son, Peter Olson, is head of Random House; referred to our office by Pat Schroeder through JDP	Applied November 2000; DOJ is closing case b/c petitioner filed appeal

1691

•	*Leonard Peltier*	Murder of a federal official (1977); escape (1980); felon in possession of firearm (1980); sentenced to two consecutive terms of life imprisonment on murder charge, plus seven more (consecutive) for escape and firearms charges		Widespread public campaign supporting release; FBI, other law enforcement oppose equally strongly; Gov. Janklow has spoken to POTUS	Denial pending here
	Don Pennington	Aiding and abetting in mail fraud and aiding and abetting in engaging in monetary transaction (June 23, 1997) (E.D. Arkansas). Sentenced to 48 months' imprisonment, $25,000 fine, and 2 years' supervised release.		Jerry W. Davis, Chairman, President, and CEO of Affiliated Foods Southwest (Little Rock, AR).	Application filed Oct. 23, 2000.
•	Mel Reynolds			Significant Congressional interest; may be possible to transfer	Could use clemency power to xfer to halfway house; OLC to report on whether POTUS can direct AG to xfer (possible statutory impediment)

1692

Dorothy Rivers	Misappropriation of govt funds (HUD?) (has served 30 months of a 70 month sentence)		Cong. Bobby Rush has spoken to POTUS; Rev. Jesse Jackson wrote letter in support	No application
Noah Robinson		?? relative of Jesse Jackson ?? OPA not forthcoming		Pending; applied in August 2000
Susan Rosenberg	Conspiracy to receive and possess unreg. Firearms; unlawful possession of destructive devices; unlawful possession of sawed-off shotgun; unlawful possession with intent to use false ID; unlawful transportation of explosives (Pto Rican independence, black power activist) 1985 (given 58 year sentence; has served 16)	Allegation she's been unfairly denied parole based upon alleged but unprosecuted offense (a Brinks robbery where guard was killed; acc. to DOJ, she drove getaway car in this robbery and in U.S. Capitol bombing)	Jerry Nadler, "Release 2000 campaign" (law profs incl. Ogletree)	Pending; applied in August 2000
Donald R. Smith	Conspiracy to manufacture methamphetamine (1995). Sentenced to 102 months' imprisonment.	Requests that he be allowed to participate in the Bureau of Prisons' Voluntary 500-Hour Residential Drug Treatment Program, and—assuming his successful completion of it—to receive a one-year reduction of his sentence.	John William Simon	

Draft
Italics = DOJ has promised report

Kemba Smith 	Conspiracy to distribute cocaine (1995) (sentenced to 24.5 years' imprisonment).	Similar to petitions POTU granted this summer; Sentenced to 24.5 years for participation in abusive boyfriend's drug ring	Many Congressional, other recommendations/inquiries	Pending
Harvey Weinig	Conspiracy to commit money laundering; criminal forfeiture; misprision of felony (1996) (sentenced to 11 years, 3 months in prison)	Assisted law partner in processing wire transfers for partner's client (whom partner claimed was legit. Businessman); partner's client was actually drug dealer; partner rec'd sentence reduction for gathering evidence against petitioner	Rep. By Reid Weingarten; JDP; Harold Ickes	Pending
Nick Wilson	1. Racketeering (2000) (sentenced to 70 months, $1.2M restitution, fined $20K) 2. Tax evasion (1999) (sentenced to 18 months, to run concurrently w/ #1, $42K restitution, $40K fine) Reported June 2000	Pled guilty to orchestrating schemes to enrich self and associates at expense of state and federal children's' programs	Spouse, Susan Wilson, has written to request commutation (b/c of effects of sentence on son Alex)	

Draft
Italics = DOJ has promised report

II. Pardons

Name	Offense	Significant Facts	Referred/Contacted by	Status
Garran Barker	Conspiracy to commit wire fraud and bank fraud (1986) (sentenced to 20 months, reduced to 15 months)	Co-defendant of Carl David Hamilton (pardoned by ~~POTUS)~~ -- granted state pardon by then-Gov Clinton contingent on federal pardon. (Role appears similar to Hamilton's, but no sentencing judge rec.)	Self, through Mary Anne Salmon	Applied July 2000
Charles Besser	2 counts of Mail fraud (1985) sentenced to 4 years' probation, fined $2,000; restitution of $62,000; 450 hours community service	As atty, facilitated scheme by two clients in which one client's company would overcharge the other's for annuity policies. Clients pointed to petitioner as engineer of scheme and rec'd reduced sentences.	Eleanor Mondale called BRL	April 1999

Lloyd George

Mario Biaggi	1. Violating Travel Act, receiving illegal gratuity; obstruction of justice (1987) (sentenced to 2 ½ years in prison, fined $500K). 2. Racketeering, conspiracy, extortion, bribery, receiving illegal gratuity, mail fraud, perjury, false statements; filing false tax return (1988) (sentenced to 8 years in prison, $242,000 fine, and $350,000 restitution. (served 22 months b/c released on medical discharge).		Cong. Rangel had advocated for pardon; JDP has been contacted as well	Pending; if DOJ makes recommendation, expect denial
Harlan Richard Billings	Conspiracy to posses marijuana with intent to distribute; sentenced in 1985 to three years' probation, 200 hrs. community svc., and fined $5K	Atty reports that U.S.Atty and presiding judge (as well as other law enforcement officers in area) support pardon	Contacted by Severin Beliveau; George Mitchell	Denied by POTUS in ~~1998~~ (DOJ had recommended favorably)

1696

Bill Borders	Convicted of offering bribe to Alcee Hastings (who was acquitted then impeached) sentenced in 1982 to 20 years (served 31 months)	Is now counsel to Cong. Earl Hilliard	Significant Cong. Interest, particularly CBC; Martin Luther King III and other religious orgs	Applied March 2000 (shd be to DAG soon)
Preston Bynum	1. Bribery concerning programs receiving federal funds (1995) (sentenced to 24 months in prison) 2. False declaration before a grand jury (1997) (sentenced to 24 months in prison and fined $25K).	Bynum caused Stephens to pay off loans for a Florida county official (whose board awarded municipal bonds to Stephens); then was convicted for lying to grand jury investigating bribes.	Support from Arkansans including Jim Pledger, Beverly and Burton Elliott, Joe Yates, Tommy Robinson, Bill Lancaster; new mailing includes Gov. Huckabee, Marion Berry, Jimmie Lou Fisher	Applied May 1999; OPA told him he was out of time New application mailed to our ofc. December 4, 2000 BRL??
Thomas Kimbel Collinsworth			Recommended by Floris Tatom	Pending; applied October 2000
Harley Cox			Support from Jay Bradford	Pending; applied December 2000
John Cross, Jr.	(1995) (sentenced to two months in halfway house and two years' supervised probation)	Embezzled funds from Worthen Bank (acc. to Cross gave $$ to youth baseball team). Describes acts as retaliation for being passed over for promotions and raises; also felt bank neglected responsibility to community. Seeks pardon to be able to hunt, vote, and possibly start mortgage business.	Lewis Epley, John Cross Sr. have written in support	

Draft
Italics = DOJ has promised report

1697

	Marsha Louisa Dickson	Sentenced in 1995		Recommended by Floris Tatom; (relative of POTUS?) Hasn't applied; MC explained process to F. Tatom and had forms sent; not sure why no app.	Has not applied
•	*Irving Drobny*	Aiding and abetting securities fraud (1983) (sentenced to 4 years)	Seeks pardon so conviction won't interfere with insurance underwriting business; also for forgiveness (is 65+ and has health problems)	Sheldon Drobny to BRL	Applied June 1999
•	William Dennis Fugazy	Perjury (1997). Sentenced to 2 years' probation and fined $2,400.		Eliot Spitzer, Attorney General of New York Rep. Charles B. Rangel; JDP has been contacted re: case as well	OPA did not process application b/c of 5-year waiting period
•	*Philip Grandmaison*	Mail fraud (guilty plea) (1996) (sentenced to one year and one day)	As Alderman, recused self from a contracting decision but lobbied and gave extremely small gifts to other Aldermen; have hundreds of letters of reference	Joe Grandmaison's brother; has also spoken to Bill M.	Applied August 2000; OPA did not process b/c of 5-year waiting period; DAG's office committed to submitting in some form to WH
•	John Haley	Aiding and abetting in the willful failure to provide information to IRS (misdemeanor); sentenced ~~to 3 years' probation~~, $40K restitution; $30K fine (1998)	Served as Jim Guy Tucker's atty for transactions where info should have been submitted to IRS	Many Arkansans submitted character affidavits, incl. Winston Bryant, John Paul Hammerschmidt, Don Munro, several LR lawyers	Applied November 2000

1698

J.R. "Rick" Hendrick	Mail fraud (1997) (sentenced to one year home detention, probation, fine) (as Honda dealer, gave gifts to Honda execs to get preferential dealership rights and access to vehicles)	Has leukemia; extensive community/charitable involvement, incl. Starting fndtn to find marrow donors, esp. minorities; very successful car dealer and has big NASCAR racing operation	Many North Carolinians have written, incl. Jim Hunt; Lt.Gov. Dennis Wicker; Hugh McColl; E.D. of N.C. Bar Assn; Harvey Gantt; Sue Myrick; Pat McCrory (mayor of Charlotte); JDP; POTUS has asked about (approached by Jim Hunt)	Applied recently; OPA has so far refused to consider; DAG committed to submitting in some form
David Herdlinger	Mail fraud (1986) (sentenced to three years' imprisonment).	As City Attorney for Springdale, AR, and Municipal Judge for Johnson, AR, solicited and accepted payments from individuals charged with driving while intoxicated. In return, petitioner dismissed or reduced charges.	David Matthews recommends; Sen. Hutchinson, former Sen. Pryor, Ed Matthews also recommend; POTUS interested in granting	We have summary denial recommendation from DOJ.
Judd Blair Hirschberg	Mail Fraud (1993) (sentenced to three years' probation)	Prosecuted for conspiring with friend to defraud insurance co.; he says friend actually stole his car. Seeks pardon to resume commodities trading. Also has been disciplined for trading impropriety.	Brother of Jeff Hirschberg, who sent to BRL; petition given to POTUS as well	Pending at DAG

1699

Marty Hughes	Aiding and abetting falsification of union records; aiding and assisting in submission of false docs to IRS; causing the filing of false docs with Dept. of Labor (1987) (sentenced to 5 ~~years'~~ probation; fine; 13-year civil and employment prohibition on service in union position)	Pardon denied by POTUS in 1995; US Atty, sentencing judge oppose Engaged in scheme where false expense and wage vouchers (total approx. $312K) were submitted to CWA; cash was funneled to political candidates. Also used forged CWA vouchers to pay employees that didn't work for CWA. (False reports were then submitted to DOL by CWA).	Current petition supported by Pres. Carter, Dick Celeste, Judge George White, Judge Thomas Lambros, ~~Judge Henry Woods,~~ John Sweeney (~~AFL-CIO~~), ~~POTUS~~ has been asked about	Pending here – we have a denial recommendation
Stanley Pruet Jobe	Bank fraud, conspiracy to commit ~~bank fraud (TX)~~ (1997) ~~(probation only; first month in ½ way~~ house, then 5 mos. Home detention)	Seeks clemency for forgiveness and b/c of negative effects of conviction on business	Cong. Silvestre Reyes; JDP	Applied 2000 Pending
Kimberly A. Johns	Possession of firearm w/no serial number (approx. 1985)	Earlier application denied in 1995; has since rec'd medal of valor for saving a man ~~drowning in a flood~~; seeks pardon to obtain visas so he can travel for his business	Cong. David Wu	Current App. Filed in April 1998; pending at OPA
Mark Johnson			Son of Floyd Johnson; rec. by James Baker of Dept. of Ag. (Arkansan?)	No application

1700

Ruben H. Johnson	Bank fraud; sentenced in 1989 to 8 years, served 5 (~~$4.6M~~ in restitution)	Arg. that regulators were aware of and approved activity for which he was convicted – and evidence wasn't admitted at trial	Lady Bird Johnson, Jake Pickle, Walter Cronkite, Liz Carpenter, POTUS interested	Applied Feb. 1999; pending
Larry Killough	Distributing controlled substance for non-medical purpose; sentenced to 20 months and fined $40K (paid in full) (1985)	First petition denied by POTUS (as recommended by DOJ); as Gov., BC granted pardon conditioned on removal of federal firearm disabilities	Medical director of Wilbur Mills rehab center in Searcy; sent app. through Kay Goss	Applied October 2000
Russell Wayne Lee	Conspiracy to commit mail fraud; sentenced to 20 months (1986) (billed city of Little Rock for legal services never rendered – approx. $20K)	Prior application denied in December 1998 (as recommended by DOJ); seeks pardon to return to practice of law; rec'd conditional pardon from then-Gov BC; firearms privs have been restored	Jay Bradford, Sandra Hicks King, Ray Jacks support	OPA not processing b/c premature
Salim Bonnor "Sandy" Lewis	Violating Securities and Exchange Act; sentenced in 1989 to three years' probation and fined ~$250K	In order to prevent the now-illegal practice of short selling prior to a secondary offering (and stabilize price of stock), authorized an individual to purchase large amt. of stock & promised to cover any losses – conviction was for manipulating price of stock and for entering into illegal credit transaction (petitioner did not stand to profit personally)	Represented by Douglas Eakeley and Nicholas Katzenbach	Applied March 2000

1701

John Francis McCormick	Racketeering (charged along w/several Boston police officers w/ accepting payments from night club owners); served just over a year in prison plus home detention (1987)	Petitioner's conviction stemmed from his accepting $400 in gifts for getting rid of a citation issued to a nightclub by the Boston Licensing Bd. Petitioner is now traveling secretary for Boston Red Sox	Rep by Tom Dwyer	Pending at DAG (denial)
Allen L. McMurrey III	Forcibly breaking into US Post Office,; possession of counterfeit access devices; dealing in counterfeit US Treasury checks; forging US Treasury checks; theft or receipt of stolen mail (1993) (sentenced to 27 months in prison, 3 years supervised release, restitution of $1,700, and fined $300		Rep. Patrick Kennedy (petitioner is his cousin)	Applied 1999
Ari Merretzzon	Bank robbery (incarcerated approx. 30 years)		Philip K. Lyon	No application pending
Michael Milken	Securities fraud; aiding and abetting securities fraud; assisting in filing false tax return; sentenced to 10 years in prison (reduced to 34 months) and fined $200M	Acc. To DOJ, the U.S. Atty and SEC are very concerned about pardon application and will weigh in		Applied October 2000

1702

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Italics = DOJ has promised report

Charles W. Morgan	Distribution of cocaine; sentenced to three years (1984)	Fully admits mistake – related to substance abuse problem at time (since overcome); has volunteered to help others with substance abuse problems (AA and NA); sentencing judge recommends pardon; extensive driving record, and several business-related lawsuits	Rep.by Bill Kennedy; George Billingsley (father) requests; POTUS interested in granting	Pending at OPA
Walter L. Nixon	Perjury (1986) (sentenced to 5 years in prison; refused to relinquish judgeship and was impeached)	When son of friend was arrested on marijuana charges, petitioner visited DA, who later stopped investigation. Petitioner bought lucrative oil and gas investments from the father. Const. question as to whether POTUS can pardon offenses that resulted in impeachment; DOJ hasn't taken a position on legal Q b/c they recommend denial.	John Coale (BRL?)	Just arrived here as rec denial BRL?

1703

David C. Owen	Filing false tax return (1993); sentenced to one year and one day and fined $6K	Failed to claim $100K payment to consulting firm as income on firm's tax return (note payment was claimed on later year's return). Also made payments from firm to subsidiaries, who then made political contributions. These were recorded as "consulting fees" and firm took an improper deduction (estimated total tax loss was $4,200).	Jim Hamilton client Seeks pardon to hunt	Applied June 2000
Robert William Palmer	Conspiracy to make false statements; sentenced to 3 years' probation and fined $5K (1995) (worked at appraisal company that gave backdated appraisals to Madison Guaranty S&L)	Firm actually performed all appraisals, but knowingly backdated in an effort to help Madison Guaranty prepare for review of its books	Catlett firm (John Yancey); Skip Rutherford	Applied September 2000
Peggy Potter	Mail fraud, defrauding U.S. Govt of tuition (1995)	Theory was that head of Dept. at UT (Tenn.) would give students information from his research firm they could use in academic work. Students would then give firm favorable treatment in govt. contracting (not proved). NASA paid her tuition for one quarter (theory was govt. expected her to get legitimate degree).	Brian DeWyngaert, Executive Assistant to the National President of the American Federation of Government Employees (via Karen Tramontano) (nothing to WH since 1998).	No application pending

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Edmund Reggie	Bank fraud (1995)		Rep'd by daughter, Victoria Reggie Kennedy	Application withdrawn due to other ongoing criminal investigations
Dan Rostenkowski	Mail fraud (1996); sentenced to 17 months in prison and fined $100K		Cong. John Lewis recommends; Kevin O'Keefe	No application pending
Archibald Schaffer, III	Violating Meat Inspection Act (sentenced to one year and one day; will be ordered to report some date after January 1, 2001)	Only individual to be sentenced to imprisonment as result of investigation of former Sec'y Espy	Rep by Woody Bassett	Has requested pardon from our office
Otha Anthony Smith	Fraud and false statements under 26 U.S.C. 7206 (1) (1997) Sentenced to 3 years' probation.	Supporter claims many jobs will be lost in Ashdown, AR, if Smith can not travel internationally for his business, Southern Refrigerated Transport	C.C. Barnette, of Texarkana, calls some part of WH approx. every other day	Pending
Jim Guy Tucker	Two cases: "Hale" case (sentence completed and restitution paid); Tax case (will be on probation 2 ½ more years)	Charged by the Whitewater Independent Counsel; severe health problems; args he is actually innocent	Attorneys for Mr. Tucker, Stanley M. Brand and Margaret Colgate Love	No application pending at DOJ.
Frank Vennes	Conspiracy to launder money; sale of firearm (as dealer) to nonresident; use of telephone to facilitate drug transaction (1987) (sentenced to 5 years in prison and ordered to pay $100K in restitution)	Complicated transactions in which he took cash from member of Chicago mafia and helped launder through overseas bank accts; when unable to repay mafia member b/c some money was stolen, he agreed to sell him guns knowing he wasn't a resident of state. Tried also to sell drugs to raise cash for debt.	To BRL from John Rafaelli; Walter and Ted Mondale are character affiants	Applied July 2000

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1705

Dan Walker	Bank fraud; perjury; executing false financial statements (1987); sentenced to seven years' imprisonment (reduced to 18 months) and five years' probation, including 500 hrs. community service	Former governor of IL. As Chairman and a director of a bank, had loaned himself maximum allowable; made loan to a company, which in turn loaned him money. Denied receiving personal benefit from bank loans during a deposition. Also filed personal financial statements in connection with business loans that overstated personal income and failed to disclose full extent of liabilities.	Dale Bumpers contacted BRL	Application pending at DOJ
Thomas Andrew Warren	Conspiracy to import marijuana (stopped by U.S. Coast Guard while en route to Colombia from Florida to purchase marijuana; agents found $41,500 in U.S. currency and approx. $1,500 in pesos on board). (1975) (sentenced to 18 months, reduced to one year and one day).	POTUS denied previous pardon request in 1997 (DOJ rec. denial).	Sen. Graham's ofc. sent through Mark Childress in 1998; President of FL State, Sandy D'Alemberte, also supports	No application pending at DOJ.
Mark Lewis Webber	Sale, use and possession of marijuana and quaaludes (USAF) (1981) sentenced to 30 months in prison (served 15) and forfeiture of $334/month in pay.	Petitioner admits wrongdoing and expresses remorse. Seeks pardon in order to hunt.	Atty is Stephen Crain of NLR	Just applied

1706

	Thomas K. Welch and David R. Johnson	Not yet convicted; indicted for conspiracy, violations of Travel Act, mail fraud, wire fraud, deprivation of honest services (mail fraud), and aiding and abetting	Indicted for giving gifts to members of Int'l Olympic Cmte in order to get winter games in Salt Lake City; charges based on Utah commercial bribery statute	Rep'd by Bill Taylor	
•	*Jack Weinstein*	Conspiracy; interstate transportation of stolen property (1975) (sentenced to 90 days in jail, 33 month's probation, and fined $20K).	Purchased stolen property for resale in his pawn and jewelry production stores. Prior application denied in 1989.	Sen. Harry Reid (contacted our ofc. and POTUS); Barbara Greenspun	In DAG's ofc.
	Harrison Williams	Bribery and conspiracy (1981) (sentenced to three years; served two; fined $50K)	Former Senator; convicted during ABSCAM, based on videotape showing him promising "sheiks" a govt contract in exchange for a loan to a titanium mine co. (Wms also accepted an 18% interest in the co.)	Charles Donovan has contacted JDP, our ofc.; Vernon Jordan contacted our ofc. as well	Application pending
•	Jack Williams	Making false statements (to FBI) (1998) Fined $5K	Convicted by IC investigating Mike Espy for his initial denial of knowledge of gifts to Espy. Co-defendant of Archie Schaffer. Seeks pardon to restore civil rts, esp. right to vote.	Character affiants are Dale Bumpers, John Breaux, Billy Tauzin	Applied to WH (not sure if sent to DOJ)

1707

CHAPTER FIVE

THE GRANT OF CLEMENCY TO DRUG MONEY LAUNDERER HARVEY WEINIG

FINDINGS OF THE COMMITTEE

Weinig was properly imprisoned for conspiring to launder millions of dollars in drug money and concealing and furthering an extortion-by-kidnapping scheme.

- *Weinig, a former Manhattan attorney, conspired to launder about $19 million dollars in drug proceeds through a Swiss bank for the Cali cartel.* Members of the money laundering organization, of which Weinig was a part, boasted that they successfully laundered more than $70 million for the cartel. In addition to conducting banking transactions for the organization, Weinig consulted with co-conspirators in furtherance of the organization's activities and stored the drug proceeds in his New York City apartment.

- *Weinig and other co-conspirators at his law firm stole from the Cali cartel about $2.5 million they were supposed to have laundered.* This theft exposed Weinig's family to a risk of being harmed by those drug dealers. In the course of investigating the organization's money laundering activities, authorities intervened when they learned that the drug dealers sent a hit man to kill one of Weinig's co-conspirators.

- *Weinig learned that one of his co-conspirators kidnapped an individual as part of a scheme to extort money from the victim's family.* Rather than report the kidnapping, Weinig made his office available as a meeting place where the ransom could be delivered and directed his associates at the firm to execute transfer agreements.

Weinig's lawyer, a prominent Washington attorney with close connections to the Clinton Administration, lobbied the White House in support of Weinig's clemency petition.

- *Weinig's wife, Alice Morey, retained Reid Weingarten, who was close to the Clinton White House, to lobby for the commutation.* In April 2000, Weingarten filed a clemency petition on Weinig's behalf with the Justice Department and the White House. Knowing that the Justice Department would advise the President to reject the Weinig commutation petition, Weingarten lobbied the White House directly, approaching White House Coun-

sel Beth Nolan, Deputy White House Counsel Bruce Lindsey, and Chief of Staff John Podesta.

- *Weingarten chose not to familiarize himself with the facts of Weinig's underlying conviction.* Accordingly, he was unable to convey to those he lobbied a full, accurate, factual basis of the merits of Weinig's petition.

Two former Clinton Administration officials, David Dreyer and Harold Ickes, lobbied the White House on Weinig's behalf.

- *Alice Morey enlisted the assistance of her cousin, former White House Deputy Communications Director David Dreyer.* Dreyer repeatedly raised the Weinig commutation with John Podesta. Ultimately, Podesta recommended that the President grant the Weinig commutation. Dreyer has invoked his Fifth Amendment rights rather than cooperate with the Committee's investigation.

- *Morey also obtained support for Weinig's commutation from former Deputy Chief of Staff Harold Ickes, whose children attended the same school as did her sons.* Ickes discussed the Weinig case with President Clinton twice and recommended the commutation of Weinig's sentence.

The Justice Department repeatedly and adamantly recommended against the commutation of Weinig's sentence.

- *On several occasions, U.S. Attorney Mary Jo White, whose office convicted Weinig, objected to any reduction of Weinig's sentence.* Ultimately, in a report to President Clinton, the Pardon Attorney and Deputy Attorney General Eric Holder voiced their strong opposition to a commutation of Weinig's sentence.

- *Pardon Attorney Roger Adams submitted a report to the President advising against the Weinig commutation.* Adams pointed out that Weinig "was a well-respected lawyer who used his professional skills to assist in laundering millions of dollars that he knew constituted the proceeds of a huge narcotics trafficking enterprise. He was involved in this activity for an extended period of time, and he admits that he engaged in it purely out of greed." Adams also informed the President that Weinig "aided and abetted the extortion of money from an individual he knew had been kidnapped at the direction of a co-defendant in order to coerce the production of a ransom."

After an apparently cursory review, the White House set aside the Justice Department's negative recommendation and granted Weinig clemency.

- *Support for Weinig's petition from John Podesta and Beth Nolan appears to have been critical.* The Associate White House counsels responsible for clemency matters did not support the petition. However, setting aside the negative recommendations of not only the Justice Department but also staff at the White House Counsel's Office, Nolan and Lindsey, who were lobbied by

Weingarten, recommended Weinig's clemency to President Clinton. John Podesta, who was lobbied by Weingarten and Dreyer, also recommended to the President that Weinig's sentence be commuted.

The White House was unjustified in commuting Weinig's sentence.

- *None of the arguments made by Weinig entitle him to executive clemency.* In his petition, Weinig stated three main reasons why his sentence should have been commuted: (1) his sentence was disproportionate and excessive; (2) his contributions to society justified his early release from prison; and (3) one of his children was suffering emotional difficulties as a result of his imprisonment and needed him to return home. The first reason is simply not true. Weinig's sentence was comparable to those received by other co-conspirators who were directly responsible for laundering large amounts of drug money and declined to cooperate with authorities. Weinig's sentence was also comparable to those received by co-defendants who participated in the extortion-by-kidnapping scheme, which Weinig concealed and facilitated. The other two reasons fail to distinguish Weinig from the vast number of other similarly situated felons, who were properly sentenced but whose families have suffered because of their imprisonment.

President Clinton's commutation of Weinig's sentence has sent out the wrong message about the United States' commitment to fighting drug trafficking.

- *President Clinton's decision conveyed an appearance of granting special consideration to wealthy, politically well-connected criminals and their relatives.* Pardon Attorney Roger Adams foresaw the message sent by the Weinig commutation, warning President Clinton that "[t]o commute [Weinig's] prison term to the five years he proposes would denigrate the seriousness of his criminal misconduct, undermine the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants, and could give the appearance of granting special consideration to economically advantaged, white-collar offenders."

- *The Weinig commutation undermines the nation's efforts to fight the illegal drug trade.* Complaints are frequently made that U.S. drug laws punish low-level drug criminals too severely yet do not punish high-level drug distributors enough. When a large-scale drug money launderer like Harvey Weinig receives executive clemency after serving five years of an eleven-year sentence, it sends the message that the U.S. is not serious about prosecuting the high-level criminals who make the drug trade possible.

- *The Weinig commutation has eroded the United States' moral authority to press other countries to fight the drug trade within their own borders.* The Weinig commutation could harm the ef-

forts of the U.S. government to extradite drug traffickers and money launderers from Latin America. Newspapers in Latin American countries have accused the U.S. of hypocrisy in the Weinig case. For example, in Colombia's leading daily, former Colombian attorney general Gustavo De Greiff, in an op-ed entitled "The Morality of the Strongest," labeled President Clinton's clemency decision "monstrous."

I. BACKGROUND

Harvey Weinig was among the 36 prisoners whose sentences were commuted on President Clinton's last day in office. Weinig, a former Manhattan attorney, was centrally involved in conspiring to launder about $19 million in drug proceeds through a Swiss bank for the Cali cocaine cartel.[1] Weinig also actively participated in a kidnapping and extortion plot.[2]

The efforts that led to Weinig's conviction began in February 1994 when the Federal Bureau of Investigation, the Drug Enforcement Administration, and the New York City Police Department jointly investigated a large international money laundering organization.[3] Ultimately, the organization was found to have laundered tens of millions of dollars in narcotics proceeds generated in the U.S., Puerto Rico, and other locations.[4] In connection with that investigation, law enforcement authorities seized almost $5 million in drug proceeds from members of the organization.[5]

A. Weinig and His Co-Conspirators

As members of the money laundering organization, Weinig and his law partner, Robert Hirsch, used their firm, Hirsch Weinig, to launder drug proceeds for the benefit of their clients, including members of the Cali cocaine cartel in Colombia.[6] After Weinig and Hirsch formed their partnership in October 1993, they helped a German resident named Tohmes Peter retrieve large sums of money that had been seized by law enforcement due to a suspicion that the money was related to drug sales.[7] To assist in the effort, Weinig recruited Richard Spence, a client and former New York City fireman who became a leader of the money laundering organization.[8] Weinig and Hirsch incorporated Transglobal Import Export Trading Co., Inc., so that Spence could open a corporate bank account through which he could operate his end of the money laundering scheme.[9]

Weinig, Hirsch, and Spence divided responsibilities in the money laundering operation. Weinig conducted banking transactions for

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[1] *See* U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 14 (Exhibit 1); NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2).

[2] *See* U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1).

[3] *Id.* at 17.

[4] *Id.* at 22.

[5] *Id.*

[6] *See id.* at 19 (describing co-defendants Miguel Omar Garrabito Botero, Amparo Hurtado Valencia, Juliana (last name unknown), and Carlos Lopez as associated with Cali cocaine cartel).

[7] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 2 (Exhibit 3).

[8] *See id.*

[9] *See id.*

the organization and consulted with co-conspirators Hirsch and Richard Spence about the organization's activities.[10] Weinig also stored the proceeds from the money laundering operation in his New York City apartment.[11] Hirsch coordinated laundering activities with Spence in New York, Tohmes Peter and Juan Guillermo Ocampo in Germany, and Leon Shulum Weinmann and his wife, Rachel, in Switzerland.[12] As part of the money laundering conspiracy, the Weinmanns received money transfers in Switzerland and remitted them to bank accounts designated by their principals.[13] Spence was responsible for organizing pickups of the drug money, depositing the money into bank accounts without raising suspicion, and wire-transferring the money to various other accounts with the intent of concealing its nature and source.[14]

Other co-conspirators included Michael Kalanz, a police officer at the 48th Precinct in the Bronx, who counted, stored (sometimes in his locker at the Precinct), and transported hundreds of thousands of dollars in drug proceeds; Charles Bruno, a New York City fireman who acted as a courier; Alexander Schwartz, a rabbi who picked up drug proceeds throughout the U.S. and returned them to New York City; Latchezar Christov, reportedly a Bulgarian diplomat who received drug proceeds in California and shipped them via overnight courier to New York City; and Gary Salerno, an enforcer of the money laundering organization who intimidated and collected money from various individuals.[15]

B. The Money Laundering Operation

The money laundering conspiracy typically operated as follows. A narcotics trafficker or his representative (for example, Juan Guillermo Ocampo) would contact a member of the money laundering network (for example, Spence and later Hirsch) to pick up a parcel of cash on the street or in a hotel in a particular city.[16] The cash

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[10] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 18 (Exhibit 1).

[11] *Id.*

[12] *Id.* at 19. Ocampo was previously convicted in New York of selling narcotics, for which he was sentenced to 5 years to life imprisonment and released on parole in or about May 1987. *Id.* In September 1994, Ocampo was re-arrested in Colombia. *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 19–21. *See also* Joseph B. Treaster, *U.S. Says It Uncovered a $100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1; John J. Goldman, *"White-Collar" Money Laundry Is Smashed Crime: Lawyers, Rabbis, a Police Officer and an L.A. Diplomat are Among 23 Charged. Ring Handled Tens of Millions of Dollars in Drug Proceeds, Officials Say*, L.A. TIMES, Dec. 1, 1994, at A7. On July 21, 1994, Salerno was arrested by NYPD for extortion involving physical injury and attempted grand larceny; and, on November 16, 1994, he was arrested for conspiracy to traffick in firearms, a federal offense. U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 20 (Exhibit 1). A contemporaneous search of Salerno's residence uncovered a "hitman's kit" containing a garrotte (a device used to strangle and sever the vocal chords of the intended victim), three pairs of handcuffs, a handgun, two rifles, ammunition, a law enforcement badge bearing the name of another, and a bugging device. *Id.*

[16] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001). During the federal investigation of Weinig's money laundering activities, Levin was with the New York field division of the DEA and was the primary case agent in the investigation. *See also* U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22 (Exhibit 1). After Peter and Ocampo began contacting Hirsch directly in the U.S., Hirsch contacted Spence, who would arrange for the cash to be picked up and retrieved back to him in New York. *Id.* Hirsch's increased involvement in the conspiracy was corroborated by his attendance at meetings in Switzerland with, among others, Weinmann and Peter from January 31, 1994, through February 1, 1994. *Id.* At that meeting, during which the network's laundering activities were discussed, the

Continued

in those parcels was generated from street sales of cocaine and totaled anywhere from tens of thousands to hundreds of thousands of dollars.[17] A member of the network, sometimes a courier, would then retrieve the parcel at the given location and deliver it to a leader in the network (for example, Spence) who would count and deposit the money into bank accounts controlled by Weinig, Hirsch, or Spence.[18] From such accounts, Weinig, Hirsch, or Spence would then transfer the money by wire or other means to the Weinmanns in Switzerland or elsewhere.[19] Through a foreign money exchange, the drug proceeds would then be auctioned to "brokers" who typically bid about 85 cents on the dollar for $10 million to $20 million bundles.[20] The brokers would then generally have to return 85 percent of the cash to the Weinmanns within a fixed period.[21] With the proceeds safely laundered, the Weinmanns would send the cash to bank accounts designated by their principals in Colombia.[22] Members of the organization would ultimately be compensated for their services by receiving about 7 percent of the amount laundered, which between 1993 and 1994 equaled between $70 million and $100 million.[23]

C. Weinig and His Co-Conspirators Run Afoul of the Colombian Cocaine Cartel

The organization lost money throughout 1993 and 1994, when law enforcement arrested some of its couriers in San Juan, Puerto Rico, and Houston, Texas, and seized drug proceeds they carried.[24] In response to those seizures, Weinig, Hirsch, and Spence filed fraudulent claims of ownership with the DEA, typically asserting that the money seized from their couriers represented the proceeds

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Weinmanns reportedly stated that they, with Peter's assistance, laundered about $72 million. *Id.*

[17] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22 (Exhibit 1).

[18] *See* Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001). *See also* U.S. Probation Office (S.D.N.Y.) Document Production (Presentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22–23 (Exhibit 1).

[19] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22–23 (Exhibit 1). Joseph B. Treaster, *U.S. Says It Uncovered a $100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

[20] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

[21] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

[22] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1). *See also* Joseph B. Treaster, *U.S. Says It Uncovered a $100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

[23] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 22–23 (Exhibit 1). When the co-conspirators of the money laundering ring discussed their activities over the phone, they often used coded language to conceal the actual nature of their conversations. For example, they referred to money as "paper" and units of $1 million as "containers." *Id.* at 18. *See also* Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

[24] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1).

of payment "for a sale of precious stones [by Spence] . . . acquired and sold overseas." [25]

The organization also lost money when some of its members, including Weinig, Hirsch, and Spence, stole from Colombian drug dealers about $2.5 million they were supposed to have laundered.[26] To conceal their theft from the Colombians, Weinig, Hirsch, and Spence drafted a bogus indictment and notice of seizure to induce their principals in Colombia into believing that their money was seized by law enforcement when Spence was "arrested." [27] In October 1994, law enforcement intercepted Weinig's explanation to Hirsch of his theft from the organization:

> WEINIG. And all of the sudden, someone says to me, I can put a million in cash in your . . .
>
> HIRSCH. Oh, God. I'm sick.
>
> WEINIG. In your, in your attic. I do a quick analysis, and understand that if everything else goes wrong in the world for the rest of my life, a million in cash takes care of everything I'll ever need.
>
> HIRSCH. That's true.
>
> WEINIG. And so I said, I'm dealing with people, and I remember this was, this was my approach. We're dealing with people who are total a**holes, who are out of control, who are scumbag, lying, cheats. And I am gonna be in this for the long haul? F**k 'em! F**k 'em! I'm taking a million dollars and let's, let's see you get it from me. That was my approach.
>
> HIRSCH. But remember the other . . .
>
> WEINIG. A million f**king dollars.
>
> HIRSCH. A million dollars, but where, you know . . .
>
> WEINIG. This is not . . .
>
> HIRSCH. How much you would have had today?
>
> WEINIG. This is not, this is dealing with normal Americans. This is dealing with guys I wouldn't take a telephone call from.[28]

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[25] *Id.* at 25. On November 4, 1993, the Hirsch Weinig law firm filed a complaint in federal court alleging that a hotel allowed someone to take a suitcase containing $260,000, which was left by Rabbi Alexander Schwartz, one of their couriers. *Id.* at 24–25. The firm subsequently filed, on February 14, 1994, a claim of ownership with the DEA for entitlement to those proceeds. *Id.* at 25. The law firm also filed three false claims on July 13, 1994, for $1,053,200 (with respect to a seizure from another courier, Charles Bruno), $1,010, and $802,893. The law firm filed another false claim on March 24, 1994, for $676,392 (with respect to proceeds seized from Gary Salerno). *Id.* at 25–26. Weinig contended that, despite being aware of the filing of those documents, he was not personally involved in their preparation or filing. *Id.*

[26] Joseph B. Treaster, *U.S. Says It Uncovered a $100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1.

[27] *Id.* at 23–24. Weinig asserts that the indictment was created by Hirsch alone. *Id.* at 24. A member of the organization who was conducting activities from Germany reportedly lost so much money that he began speculating in commodities to recoup the losses but then lost even larger sums on poorly placed market gambles. Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

[28] *See* U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court

Continued

As the foregoing indicates, Weinig believed that because his clients were unsavory he was justified in stealing their drug proceeds. To account for the millions in drug proceeds they stole from their Colombian principals, Weinig, Hirsch, and Spence planned to divide it among themselves and allow Spence to disappear, letting their principals believe that Spence was arrested and imprisoned.[29] Plainly, Weinig's decision to steal from the Colombian drug traffickers exposed him, his co-conspirators, all of their families, and various innocent bystanders to a considerable risk of harm.

The theft of the drug money by Weinig, Hirsch, and Spence ultimately led to the unraveling of the money laundering conspiracy and to Weinig's imprisonment. In late 1994, leaders in the Cali cartel apparently decided that Hirsch had stolen money from them and sent two individuals, Miguel Omar Garrabito Botero and Amparo Hurtado Valencia, to "convince" him to return the money.[30] Hirsch indicated that he would attempt to get the money together.[31] Unknown to Hirsch and the Colombians, law enforcement was monitoring these discussions and approached Hirsch to obtain his cooperation.[32] Law enforcement also informed Hirsch that the Colombians had decided to kill him and had, in fact, dispatched a hitman to New York.[33] Once provided with this information, Hirsch began cooperating with the investigation of the money laundering network.[34] Over the next several months, the money laundering network had meetings to address the actual and the fictitious seizures.[35] With Hirsch's cooperation, many of those meetings were observed or recorded by law enforcement.[36]

As money owed to the cartel became more of a problem, Weinig decided to extend his criminal activities beyond money laundering. On November 15, 1994, Spence told Weinig that he had kidnapped an individual named James Clooney, who had swindled him out of

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Judge (Mar. 21, 1996)) at 3–4 (Exhibit 4) (transcription of conversation between Harvey Weinig and Robert Hirsch recorded in October 1994).

[29] *Id.*

[30] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 24 (Exhibit 1). Botero and Valencia similarly threatened Tohmes Peter and Juan Ocampo, both of whom conducted money laundering activities for the organization from Mulheim, Germany. *Id.* Ocampo's brother was apparently kidnapped in Colombia. *Id.* There is no doubt that Weinig was aware of the risk of harm his theft from the cartel created. On September 30, 1994, Hirsch told Weinig that Botero was the principal "of everyone" in Colombia and explained to him the financial difficulties that arose from the debt owed to Botero. *Id.* at 27. Weinig acknowledged the problem and said, "[L]isten, let's not talk about this on the phone." *Id.* In response to Hirsch's request for the telephone number for his private line at the office, Weinig noted that he did not think that his private line was any more secure than the line on which they were speaking. *Id.* Hirsch also told Weinig that, in a previous conversation with Botero, Botero implied that Ocampo might be dead. Weinig replied, "[L]et's not talk about it." *Id. See* Joseph B. Treaster, *U.S. Says It Uncovered a $100 Million Drug-Money Laundry*, N.Y. TIMES, Dec. 1, 1994, at B1

[31] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 27 (Exhibit 1) (describing that Hirsch, Weinig, and Spence pooled together some of the money they had stolen and sent it to their clients in Colombia).

[32] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); Timothy O'Brien, *Embarrassment of Riches: Cartels Use U.S. Lawyers to Launder Drug Fortunes*, ASIAN WALL ST. J., May 30, 1995, at A1.

[33] *Id.*

[34] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

[35] Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 23 (Exhibit 1).

[36] *Id.*

$237,000 by tricking him into investing in an insolvent company.[37] Although Clooney had assets that would have enabled Spence to recover part of his loss, Clooney would not return Spence's money.[38] While Weinig was abroad between November 9 and 13, 1994, Spence had Clooney kidnapped to "compel him to return the money that he had wrongfully taken."[39] On November 15, 1994, Weinig told Hirsch that Spence "seized a person."[40] After Hirsch joked with him that Spence "learned it from the Colombians," Weinig continued, "[Clooney] will be released as soon as his family produces money[.]"[41] Hirsch responded, "Wait a minute. Hold it, hold it. Dick Spence is holding someone hostage and you're sitting here? . . . He's holding a person and you really don't see any problem with that?"[42] Hirsch observed that Clooney might notify the authorities, but Weinig replied, "Well, he's not in a position to call the police at this point, right?"[43] Weinig rationalized Clooney's abduction by noting, "You know [Spence is] kidnapping someone who owes him money here."[44] He continued, "It's not drug money, it's money. He's lost some good money."[45] Weinig apparently felt that his role as a lawyer might conflict with his participation in a kidnapping. He therefore attempted to justify his involvement to Hirsch:

> We didn't do it. I don't know anything about it. If he tells me a crime is going to be committed, then I have an obligation, I have to disclose it or go to the authorities. . . . But he didn't do that. He just talked to me a few times about "I couldn't just sit around and wait so I had some goons go talk to the guy and they're gonna make sure the money comes this week."[46]

Clooney was released the following day on the condition that he surrender his artwork and a home mortgage to settle his debt to

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[37] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 3–5 (Exhibit 3); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 6 (Exhibit 4).

[38] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 3–5 (Exhibit 3); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 6 (Exhibit 4).

[39] Lev Dassin Document Production at 11 (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5). *See also* U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 19, 1996)) (Exhibit 6) (transcript of conversation between Harvey Weinig and Robert Hirsch recorded on November 15, 1994).

[40] *Id.*

[41] *Id.*

[42] *Id.* at 5–6.

[43] *Id.* at 6.

[44] *Id.*

[45] *Id.* at 25.

[46] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 4 (Exhibit 3).

Spence.[47] Weinig offered his office as a meeting place where Clooney could convey the ransom and instructed two of his associates to execute transfer agreements when Clooney and his girlfriend arrived at the office.[48] However, he left before they arrived.[49]

D. Weinig's Prosecution and Sentencing

Robert Hirsch was arrested in September 1994 and, with Spence, subsequently cooperated with authorities in their investigation of the remaining members of the money laundering organization.[50] On November 30, 1994, Weinig and the remaining members of the organization, including Tohmes Peter, were arrested.[51] Weinig was subsequently released on bail.[52] Weinig was indicted on December 22, 1994, and April 20, 1995, with several co-defendants in the Southern District of New York for conspiring to launder drug proceeds, 15 counts of money laundering, two counts of interstate transportation of stolen money, wire fraud, three counts of making false statements to federal authorities, and criminal forfeiture.[53] On September 21, 1995, Weinig was charged under a separate indictment with interfering with commerce by extortion arising from his participation in Spence's abduction of Clooney.[54]

Shortly before Weinig was to go to trial on money laundering charges, he pleaded guilty to conspiring to launder drug money for the Cali cocaine cartel and to owning or controlling property that was involved in and traceable to the money laundering conspiracy.[55] Weinig's plea to those charges resulted in his forfeiture of various personal and business assets, including his summer home, proceeds traceable to his money laundering activities, and personal

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[47] U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 7–8 (Exhibit 4).

[48] *Id.* at 8. Specifically, Weinig instructed two attorneys at the firm to receive the ransom from Clooney. *Id.*

[49] *Id.*

[50] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 2 (Exhibit 4). *See* Telephone Interview with Mark Levin, former Special Agent, Drug Enforcement Administration (Mar. 22, 2001).

[51] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1). *See also* NARA Document Production (Criminal Complaint, *U.S. v. Weinig* (S.D.N.Y. Nov. 29, 1994)) (Exhibit 7); NARA Document Production (Affidavit of Special Agent Jeffrey Drubner, *In Re Application for Arrest and Search Warrant* (S.D.N.Y. Nov. 29, 1994)) (Exhibit 8). The best recollection of those involved in Weinig's arrest is that he was taken into custody at his home, without incident, and outside the view of his children. *See, e.g.*, Telephone Interview with Lev Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

[52] U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 29 (Exhibit 1).

[53] U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig* (S.D.N.Y. Dec. 22, 1994)) (Exhibit 9); U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig* (S.D.N.Y. Apr. 20, 1995)) (Exhibit 10); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 4 (Exhibit 1).

[54] U.S. District Court (S.D.N.Y.) Document Production (Indictment, *U.S. v. Weinig*, S2 95 CR–167 (KTD) (S.D.N.Y. Sept. 21, 1995)); U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 13 (Exhibit 1).

[55] *Id.* at 14. *See also* NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2) (plea agreement).

and business bank accounts.[56] Weinig also pleaded guilty to knowingly concealing from law enforcement authorities Spence's abduction of Clooney for the purpose of extorting the payment of ransom.[57] Because he waited until the eve of trial to plead guilty and did not cooperate with law enforcement, Weinig did not receive any credit for cooperation in the plea agreement.[58]

The documents relating to Weinig's plea show that he failed not only to cooperate with law enforcement but also to accept responsibility for his actions. In his allocution before Judge Kevin T. Duffy, Weinig stated that he originally believed representations made by Hirsch that Tohmes Peter was involved in the "worldwide distribution of parallel market or greige market goods, including electronic equipment, computer equipment, health and beauty aids, and other commodities[,]" not money laundering.[59] But, Weinig conceded that "[f]rom the very start . . . [he] had misgivings about the highly unconventional nature of the activity in which [Peter] was engaged" and "[a]s time went on, [he] deliberately ignored obvious indications that these monies were, in fact, the proceeds of illicit drug transactions, and eventually [he] was fully aware of this fact."[60] Weinig admitted that he ignored the following indicators: DEA statements that the proceeds at issue were drug-related; the "highly unconventional locations, . . . [h]otel rooms, street corners and empty cars in parking lots where the money was transferred"; that "[his law] office never saw documents that would ordinarily underlie a commercial transaction"; and that he received "what [he] perceived to be an unreasonably large amount of money in relation to the business being conducted."[61] However, Weinig argued that, with respect to the money laundering operation, he was less involved than were Hirsch and Spence in the operation's day-to-day operations.[62] Regarding his role in the kidnapping scheme, Weinig maintained that he was not told about the extortion-by-kidnapping scheme until after Clooney was abducted.[63]

In reply to Weinig's claims, the Government argued that Weinig was in fact centrally involved in the money laundering organization with Hirsch and Spence from its inception and played an important role in the kidnapping.[64] In support of its position, the Government cited private statements and proffers made by Hirsch and Spence, both of whom cooperated with the Government from the date of their arrest.[65] In particular, the Government noted that both

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[56] *Id.* at 16–17.

[57] *Id.* at 14. Under 18 U.S.C. §4 (2000) of the federal criminal code, this offense is referred to as "misprision of a felony."

[58] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., U.S. Department of Justice (Nov. 26, 2001).

[59] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 6 (Exhibit 3) (quoting transcript of allocution).

[60] *Id.*

[61] *Id.* at 6 n.14.

[62] U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special Assistant U.S. Attorney for the S.D.N.Y., for Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 1 (Exhibit 4).

[63] *Id.*

[64] *Id.* at 1–9.

[65] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); U.S. District Court (S.D.N.Y.) Document Production (Letter from Lev L. Dassin, Assistant U.S. Attorney for the S.D.N.Y., and Mark P. Goodman, Special

Continued

Hirsch and Spence had consistently stated that Weinig was generally aware of the organization's day-to-day activities and had spoken to them about those activities frequently.[66] The Government also cited various wiretapped conversations, which clearly and consistently inculpated Weinig.[67] The Government also argued that the level of Hirsch's and Spence's involvement in the organization was irrelevant to Weinig's sentencing.[68] According to the Government, Weinig's conduct was "extremely serious and reprehensible" and was motivated by "unmitigated, unrelenting greed and arrogance."[69] With regard to Weinig's role in the extortion scheme, the Government argued that, for sentencing purposes, Weinig's activities should be considered independent of those of the other criminals involved and characterized his conduct, particularly inasmuch as Weinig was a lawyer, as "chilling."[70]

Judge Duffy agreed. On March 22, 1996, he sentenced Weinig to the maximum sentence under federal guidelines—11 years and three months.[71] Before he did so, John Wing, Weinig's attorney, asked for leniency:

> Your Honor, when my kids were young, I was familiar with that Sesame Street character Big Bird and a song he used to sing about how everybody makes mistakes, big people, small people, as a matter of fact, law people. It's probably a different version of the doctrine of original sin, but Harvey Weinig made some business mistakes[.][72]

Wing continued by noting that his client "did not sit down and make a conscious, knowing decision to initiate and enter into a business of laundering drug proceeds."[73] Rather, according to Wing, Weinig was misled by his law partner, Robert Hirsch, "a man he liked, respected, trusted, someone he thought was smart," into believing that they were handling "gray market" forfeiture cases unrelated to narcotics trafficking.[74] However, Wing conceded that after Weinig learned about the true nature of the business, "[he] stayed in. [He] made money. He liked having the security."[75] Wing then discussed Weinig's role in the extortion by kidnapping scheme, which he characterized as "also somewhat bizarre."[76] Wing conceded that, with full knowledge of the abduction scheme, Weinig "basically let it happen. He didn't stop it."[77] In an attempt to offset the seriousness of Weinig's criminal conduct, Wing mentioned Weinig's character, the harm his behavior visited on his family, and the legal assistance Weinig occasionally made available to various friends without charge.[78]

Assistant U.S. Attorney for the S.D.N.Y., Department of Justice, to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Mar. 21, 1996)) at 2 (Exhibit 4).

[66] *Id.* at 3.
[67] *Id.*
[68] *Id.*
[69] *Id.* at 6.
[70] *Id.*
[71] U.S. District Court (S.D.N.Y.) Document Production (Transcript of Sentencing Hearing, *U.S. v. Weinig, et al.* (S.D.N.Y. Mar. 22, 1996)) at 14 (Exhibit 11).
[72] *Id.* at 2–3.
[73] *Id.* at 5.
[74] *Id.*
[75] *Id.* at 7.
[76] *Id.*
[77] *Id.* at 9.
[78] *Id.* at 9–11.

Speaking for himself at sentencing, Weinig conveyed to Judge Duffy, among other things, that "today marks yet another milestone in the nightmare from which I am unable to awake."[79] But Judge Duffy observed the following with regard to Weinig's involvement in the kidnapping scheme:

> You know, you talk about a nightmare. Nightmares come from the unconscious, the subconscious. What you are facing is something that you were conscious or you got yourself into. . . . The suggestion has been made that you are a very altruistic person, that you are a great guy . . . . I don't know . . . . What would you have done, Mr. Weinig, if your son Jacob had been kidnapped and some lawyer knew about it . . . and didn't do anything? . . . I insisted on getting the tape and listening to your conversation with Hirsch when you talk about it, very flip, matter of fact. You couldn't care less, but if it had been your son, you would have cared more. . . . You apparently were able to divide yourself in two, outside the office and inside. Even when Clooney came in, your attorney says you let it happen. Sure you let it happen, because you went, and you stuck two young associates with the job of cleaning it up.[80]

With regard to Weinig's involvement in the money laundering operation, Judge Duffy noted the following:

> The suggestion is made that you are not smart or sophisticated. I can't believe that. You thought that the money laundering was coming in gray market goods. But even you admit that you knew where it was coming from, at least at the end.
>
> What are we talking about? Well the figures vary, from 72 million dollars, that the Swiss bankers claimed to have laundered, to nineteen, which I understand you are accused of. Nineteen million dollars in drugs is a lot of money. That much drugs is a lot of pain. If [your sons] Samuel or Jacob were the ones who were using the drugs, you would be singing a different story, an entirely different song.[81]

Judge Duffy thereupon noted that "if [this case] had been in the old days, I would have given [Weinig] the statutory maximum."[82] On March 22, 1996, Judge Duffy sentenced Weinig to 135 months (11 years and three months) plus three years supervised release and a $100 special assessment.[83] Even with credit for good behavior, Harvey Weinig would not get out of prison until 2005.

After his conviction in federal court, Weinig filed for resignation from the New York Bar with the Appellate Division of the State of New York. That court accepted Weinig's resignation, observing that "[its] review of the record in this matter reveals that respond-

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[79] *Id.* at 11.
[80] *Id.* at 12–14.
[81] *Id.* at 14.
[82] *Id.*
[83] U.S. District Court (S.D.N.Y.) Document Production (Judgment and Commitment Order, *U.S. v. Weinig, et al.* (S.D.N.Y. Mar. 25, 1996)) (Exhibit 12). *See 11-Year Sentence for Lawyers in Drug Case*, N.Y. TIMES, Mar. 23, 1996, at A25.

ent engaged in a course of conduct that can only be described as shocking and reprehensible for anyone, let alone a member of the bar."[84] The court also emphasized that if Weinig had not voluntarily resigned from the bar, a "serious crimes" hearing would have commenced with disbarment being "the only appropriate sanction."[85]

II. WEINIG'S EFFORTS TO OBTAIN EXECUTIVE CLEMENCY

Soon after Weinig was imprisoned, John Wing, Weinig's criminal defense counsel, wrote a 34-page letter to the U.S. Attorney for the Southern District of New York, Mary Jo White, in which he sought a reduction in his sentence, citing the difference between Weinig's sentence and those of his co-conspirators.[86] The U.S. Attorney rejected Wing's request.[87] After that effort, Weinig focused his efforts on obtaining executive clemency.

A. Weinig Hires Reid Weingarten to Lobby for Clemency

After Weinig was sent to prison, his wife, City University of New York law professor Alice Morey, explored ways of getting Weinig out of prison. Perhaps Morey's most important move was to hire Reid Weingarten, a prominent Washington attorney with close connections to the Clinton White House. Weingarten had represented a number of key figures in Clinton-era scandals, including Yah Lin "Charlie" Trie, Ron Brown, Mike Espy, and Pauline Kanchanalak. In representing these individuals, Weingarten had frequent contact with senior Clinton White House officials and their attorneys. Weingarten was also well-connected in the Justice Department, having served as a trial attorney in the Public Integrity Section.

A friend told Weingarten about the Weinig case in 1998 and asked him to meet with Weinig's wife.[88] Weingarten met with Morey, who was at her "wits end" because of Weinig's imprisonment and the harm his imprisonment had caused to her children.[89] Weingarten ultimately took the case because "the general sentiment was that the sentence was 'grossly disproportionate.'"[90] Accordingly, Weingarten prepared a clemency petition packet on Weinig's behalf and attached letters submitted while Weinig was awaiting sentencing and written in support of the clemency petition itself.[91] In the petition, Weinig set forth his offenses as follows:

> As to the first count, I assisted various individuals in laundering money, after realizing that the funds were proceeds of illegal drug sales. As to the second count, I became

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[84] *In re Weinig*, 642 N.Y.S.2d 654, 656 (N.Y. App. Div. 1996).

[85] *Id. See also Disciplinary Proceedings; Appellate Division; First Department*, N.Y. LAW J., May 20, 1996, at 5; *Today's News Update*, N.Y. LAW J., May 20, 1996, at 1.

[86] *See generally* Lev Dassin Document Production (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5); Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

[87] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

[88] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

[89] *Id.*

[90] *Id.*

[91] *Id. See also* NARA Document Production (Petition for Commutation of Sentence, Apr. 6, 2000) (Exhibit 13) (letters attached to petition not attached).

> aware, after the fact, that a client of mine had detained an individual who had defrauded my client and owed my client money. I subsequently instructed associates in my law firm to prepare documentation that gave my client a security interest in some of the individual's assets. I did not report to the authorities that my client had previously detained the individual.[92]

Weinig also observed that "[a]s to my client's abduction of an individual, I did not learn of the kidnapping until after the individual had been released."[93] As bases for the commutation of his sentence, Weinig argued that: (1) his sentence was grossly disproportionate to the sentences given to more culpable co-defendants and to money laundering sentences nationwide; (2) he had made and will continue to make contributions to society; and (3) his family and, in particular, his youngest son needed him to return home.[94]

Weingarten filed a copy of the petition with the Pardon Attorney's Office at the Justice Department on April 3, 2000,[95] and with the White House Counsel's Office on April 7, 2000.[96] Weingarten knew that the support of the prosecuting U.S. Attorney's Office was critical because he had previously represented two clients in clemency proceedings (and prevailed in one of them).[97] Accordingly, he spoke with Deputy U.S. Attorney Shirah Neiman and Assistant U.S. Attorney Alan Kaufman in the Southern District of New York.[98] Weingarten knew that the prosecutors office had to be on board or the application was not going anywhere.[99] In Weingarten's "spirited" conversation with Neiman and Kaufman, the prosecutors indicated that they would not recommend commutation of Weinig's sentence.[100] Therefore, sometime in the fall of 2000, Weingarten turned to Pardon Attorney Roger Adams.[101] Rather than persuade Adams to support commutation of Weinig's sentence, which he was confident he would not do, Weingarten intended only to have Adams "soften" his recommendation against granting Weinig clemency.[102] Weingarten failed, as is apparent from the Justice Department's report to President Clinton regarding Weinig's clemency petition, which is discussed below.

Weingarten then turned his attention to the White House. When Weingarten's practice occasionally required trips to the White House, he typically met with White House Counsel Beth Nolan,

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[92] *Id.*
[93] *Id.* (attachment).
[94] NARA Document Production (Harvey Weinig's Memorandum in Support of His Petition for Commutation of Sentence, Apr. 6, 2000) at 6 (Exhibit 14) (originally attached to petition).
[95] NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Roger Adams, Pardon Attorney, Department of Justice (Apr. 3, 2000)) (Exhibit 15); Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).
[96] NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Beth Nolan, Counsel to the President, the White House (Apr. 7, 2000)) (Exhibit 16); Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001). *See also* NARA Document Production (Letter from Reid Weingarten, Partner, Steptoe & Johnson, to Roger Adams, Pardon Attorney, Department of Justice (Apr. 3, 2000)) (Exhibit 17) (indicating, in note by Podesta to Nolan, "I need to discuss this one with you. Can you give me a call[?]"); NARA Document Production (Letter from Beth Nolan, Counsel to the President, the White House, to Reid Weingarten, Partner, Steptoe & Johnson (May 25, 2000)) (Exhibit 18) (drafts of letter attached).
[97] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*

Deputy White House Counsel Bruce Lindsey, or Chief of Staff John Podesta.[103] Though Weingarten has no specific recollection of meetings he had with any of them regarding the Weinig matter, he is confident that he brought the matter up with them.[104] Weingarten implored those staff members to review the Weinig clemency petition, telling them "please read it, it sings."[105] He also communicated that Weinig was a "small fry in terms of culpability" and that the Weinig family believed that their youngest son's life was in jeopardy if Harvey Weinig was not released from prison.[106]

However, it appears that Weingarten was not well situated to lobby the White House on the Weinig case because he was ignorant of many basic details of the Weinig case. For example, when discussing the Weinig case with Committee staff, Weingarten attempted to characterize Weinig as a low-level white collar criminal.[107] However, he readily admitted that he "never, ever, ever got into the facts of the case because I felt that I didn't need to."[108] Regarding the kidnapping-related charge, Weingarten said, "That could hardly be called a kidnapping. If it was, it was the mildest kidnapping ever. First of all, the facts are in dispute. And, the alleged victim was fed steaks and whores."[109]

Every aspect of Weingarten's response is troubling. First, Weingarten was apparently trusted and respected by White House staff. It is difficult to imagine how, in lobbying the Administration, Weingarten could have accurately conveyed a factual basis for his belief in the merits of Weinig's clemency petition when he "never, ever, ever" felt the need to "[get] into the facts" of Weinig's underlying conviction. Second, contrary to Weingarten's assertion, the facts most relevant to Weinig's active involvement in the extortion-by-kidnapping scheme were not in dispute. In fact, Weinig admitted most of them in court. Those facts established that Weinig was aware of the scheme to kidnap Clooney and facilitated Clooney's extortion through that scheme. Finally, Weingarten's contention that Clooney's kidnapping was the "the mildest . . . ever" because his kidnappers provided him with "steaks and whores" fails to reflect the true facts of the crime. As Lev Dassin, the assistant U.S. Attorney who prosecuted the case indicated to Committee staff, "[H]aving your abductors have sex with prostitutes while you're cowering by the bed on the floor can, in no way, be construed as pleasant."[110] Weingarten failed to appreciate the actual dynamics of Clooney's abduction. The kidnappers, rather than Clooney, apparently partook of the steaks and prostitutes at issue.[111] This dis-

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[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.* Weinig's trial attorney, John R. Wing, also argued this point in a letter to U.S. Attorney Mary Jo White after Weinig's sentencing. In that letter, Wing argued that Weinig's belief that Clooney was not in danger was shared by law enforcement and that, in fact, "[i]t was later learned that Clooney was provided with steaks and prostitutes during his 'detention.'" Lev Dassin Document Production (Letter from John R. Wing, Member, Weil, Gotshal & Manges, to Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice (Feb. 28, 1997)) (Exhibit 5).
[110] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).
[111] There are additional elements of the crime of which Weingarten was apparently unaware when he spoke with Committee staff. First, as Clooney was being abducted, he was plainly fear-

tinction appears to have been lost on Weingarten. Nonetheless, assuming only for the sake of argument that Weingarten's representation that Clooney was treated favorably while abducted is accurate, there is an obvious problem with Weingarten's citing it here. It is simply bizarre for a lawyer, particularly one with Weingarten's background, to suggest that the offense is mitigated by supplying a kidnapping victim with "steaks and whores."

B. Weinig's Wife Seeks Support for His Clemency Petition

While Weingarten was meeting with the White House about the Weinig matter, Alice Morey called several public officials and prominent rabbis regarding her husband.[112] Morey sought these individuals' help in obtaining a commutation of Weinig's prison sentence. Morey's statements to these individuals can be inferred from her February 24, 2000, letter to the Pardon Attorney. In that letter, Morey characterized Weinig's role in the conspiracy as "exceedingly limited."[113] She also asserted that "if [Weinig] has to serve the full remainder of his sentence . . . our family will not be able to survive."[114] Morey further observed that "[w]ith the exception of [Weinig], all of the twenty or so co-defendants in this case received relatively light sentences and most have been out of jail for some time."[115] She continued, "[I]t is cruelly inequitable that Hirsch and the other major players received sentences so far lighter than that which [Weinig] received, despite [Weinig's] less significant role."[116]

Morey's letter to the Pardon Attorney contained many of the same arguments made in Weinig's clemency petition. However, Morey's letter also contained arguments not asserted by others. For example, Morey attempted to distance Weinig from the conspiracy by noting that Tohmes Peter was Hirsch's client, not Weinig's.[117] However, she conceded that Weinig acted on behalf of Peter "in a few instances when Hirsch was not available [and] accepted the cash payments that [Peter] made to the firm[.]"[118] Nonetheless, Morey maintained that "[i]nterestingly enough, prior to Hirsch's arrest and subsequent cooperation, the government had little or no evidence that [Weinig] was connected in any way other than as Hirsch's law partner."[119] Morey also argued that the Government had essentially entrapped Weinig, claiming that "once Hirsch began cooperating with the federal government, he began involving Harvey in his dealings with Peter Tohmes."[120] Morey further ar-

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ful for his life. He cried. *See* Appellate Brief, *U.S. v. Messina*, Docket No. 96–1789 (2d Cir. 1997) at 9 (citing to record). When Spence told co-conspirator Richard Messina on the telephone that Clooney cried while being abducted, Messina responded that he wished he could have been there to have seen Clooney cry. *Id.* Also, at various times during Clooney's ordeal, a co-conspirator brandished a butterfly knife. *Id.* Additionally, Clooney noticed that two other co-conspirators had a gun. *Id.* Finally, Clooney's kidnappers told him several times that he would be harmed if he tried to escape. *Id.* Had Weingarten bothered to "get into the facts," one hopes that he would have refrained from characterizing Clooney's abduction as "the mildest ever."

[112] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

[113] NARA Document Production (Letter from Alice Morey to Roger Adams, Pardon Attorney, Department of Justice (Feb. 24, 2000)) (Exhibit 19).

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

gued that the original indictment "barely mentions" Weinig, "perhaps because he had little to do with the illegal activities." [121]

Morey's position as to Weinig's activities is totally misleading. Weinig's extensive involvement in the money laundering conspiracy was supported by statements of co-conspirators and corroborated by Weinig's own admissions captured by a wiretap. Contrary to Morey's representation that Weinig's involvement was barely mentioned in the indictment, counts one, five, eleven through seventeen, nineteen, twenty-six through twenty-nine, and thirty through thirty-eight of the April 20, 1995, indictment clearly indicate Weinig's deep involvement in the money laundering conspiracy well beyond his mere partnership in the law firm. Indeed, Morey's characterization of Weinig's business transactions as having been conducted "in a few instances" is charitable and, to the extent that it ignores the $19 million Weinig admitted to having laundered for members of the Colombian cartel and Weinig's role in the extortion-by-kidnapping scheme, irrelevant.

Regarding Weinig's guilty plea and sentencing, Morey asserted that Weinig pleaded "[f]or a host of reasons, mostly emotional and financial." [122] Morey also suggested that "[a]lthough [Weinig's] lawyer had been hopeful that the court would depart downward in sentencing, Judge Duffy sentenced [Weinig] to the top of the guidelines without articulating his reasons." [123] Morey's assertion of why Weinig pleaded guilty seems to confirm that Weinig never fully accepted responsibility for his actions—one of the requirements for receiving a commutation. Indeed, there was never a legitimate expectation of downward departure at sentencing. Weinig provided no meaningful assistance to authorities until immediately before trial, and, as described below, the information he ultimately provided was useless.[124] Accordingly, Weinig's plea agreement did not contemplate a downward adjustment for substantial assistance to authorities.[125]

C. Weinig's Wife Obtains Support From Individuals With Ties to the Administration

Alice Morey obtained the assistance of a number of individuals to press her husband's clemency case with the White House. A key individual who helped Morey was her cousin, David Dreyer, who served as a deputy communications director with the Clinton White House and senior advisor to Clinton Administration Treasury Secretary Robert Rubin. Dreyer used his White House contacts to lobby White House Chief of Staff John Podesta.[126] When asked about Dreyer's role in lobbying for the commutation, Weingarten confirmed that Dreyer "bugged" Podesta about the Weinig matter but does not know how many times Dreyer contacted the White House.[127] Weingarten noted that, because Dreyer was a "noodge," it might have been as many as 20 times.[128]

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[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).
[125] *Id.*
[126] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).
[127] *Id.*
[128] *Id.*

Dreyer has publicly noted his fondness for his cousin Alice and that he occasionally saw Weinig at various family functions.[129] He also observed that his friendship with Podesta, with whom he occasionally jogged in Rock Creek Park, remained strong even after he left the White House.[130] According to Dreyer, sometime in July 2000 during a visit to Podesta's office, he gave Podesta the cover memorandum from Weinig's clemency petition and "asked him to take a look at it and explained to him the relationship, and why this mattered[.]" [131] Dreyer confirmed that Podesta made no promises but was "certainly willing to look into it as an act of friendship[.]" [132] Dreyer asked Podesta about the matter again during the Fall of 2000 as they were jogging.[133] Podesta responded by telling Dreyer not to expect any action for several months.[134] According to Weingarten, Podesta felt that the Weinig clemency matter was a "good story" and that a decision could be made "on the merits." [135]

Some insight as to what Dreyer specifically told Podesta, and possibly others in the Administration, about the Weinig matter can be gleaned from a letter that Dreyer submitted to the Pardon Attorney's Office in support of Weinig's petition.[136] Dreyer noted in the letter that "[n]o conceivable societal interest is being served by forcing Harvey [Weinig] to remain in prison for the entire length of his maximum sentence." [137] Dreyer cited as bases for clemency: (1) the "disproportion" between Weinig's sentence and those of co-defendants "all more deeply involved [in the money laundering conspiracy and misprision] than he"; (2) the fact that "Harvey's wife and sons are bearing the brunt of his punishment with enormous force"; and (3) the fact that Weinig was "a good and decent father" and "a contributing member of the community." [138] Apparently content with only a superficial appreciation of the facts, Dreyer noted that the apparent disproportion between Weinig's sentence and those of his co-defendants "[o]n its face . . . is not fair." [139] As described above, these arguments are based on an incomplete understanding of the underlying case. Perhaps more importantly, characterizing Weinig as a "contributing member of society" does not help those unfamiliar with the facts of the case understand that his most significant "contribution" was to assist the Cali cartel in flooding the United States with cocaine.

In light of the specious arguments Dreyer set forth in his letter to the Pardon Attorney and also likely communicated to senior Administration officials, Chairman Burton asked Dreyer to participate in an interview with Committee staff and subpoenaed documents

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[129] Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).
[136] Dreyer's letter refers to "papers filed with your office [seeking] a clemency . . . for Harvey Weinig," yet the petition was actually filed with the Justice Department (and the White House Counsel's Office) months later in April 2000.
[137] NARA Document Production (Letter from David Dreyer, Principal, TSD, Inc., to Roger Adams, Pardon Attorney, Department of Justice (Feb. 28, 2000)) (Exhibit 20).
[138] *Id.*
[139] *Id.*

from Dreyer.[140] Dreyer declined the Committee's invitation and asserted his Fifth Amendment rights against self-incrimination rather than produce records. Dreyer's role in lobbying senior Clinton Administration officials for the Weinig commutation was obviously critical. Therefore, it is disappointing that Dreyer would not cooperate with the Committee's investigation. Moreover, it is troubling that Dreyer believed that something about his involvement in the Weinig matter might be incriminating. Nevertheless, the Committee must take his representation at face value and conclude that Dreyer at least believes that he might have incurred criminal liability during the course of his activities.

Weinig's wife, Alice Morey, also directly lobbied Harold Ickes, the President's former Deputy Chief of Staff, whose children attended her sons' school.[141] Ickes and Podesta have publicly stated that, like Dreyer, they were persuaded to support Weinig's petition by the merits of the argument that Weinig's sentence was disproportionate to other sentences imposed in the case.[142] Ickes, in particular, said, "I think what really drove it home to me was the disparity in the sentences."[143] They have also stated that they believed that Weinig's sons were suffering considerably from their father's incarceration.[144] That appears to be the position that Ickes conveyed to President Clinton when the President approached him about the Weinig petition.[145] Ickes recalled, "[The President] asked me about it a couple of times. I don't think he was aware of all the nuances, so I told him my view of it. It was the sentencing issue. I said, 'Look, this guy was sentenced. He pled guilty. And nobody is claiming that he's a saint.'"[146] However, it is not entirely clear why the sentencing disparity—not whether Weinig's crimes merited the sentence Judge Duffy imposed—was the primary focus. It appears in hindsight that the disparity argument was manufactured to compensate for the fact that there were actually no intellectually defensible grounds for the argument that Weinig's sentence should be commuted.

Reid Weingarten also enlisted Alma Brown, the widow of former Commerce Secretary Ron Brown, in the clemency campaign. Weingarten had represented Ron Brown in various investigations prior to his death and remained friendly with Alma Brown. Knowing that Alma Brown remained close to the White House, Weingarten asked her to write a letter "putting in a good word" for Weinig.[147] Brown initially resisted but eventually did so.[148] Weingarten believes that Brown also might have spoken to President Clinton about the Weinig matter.[149]

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[140] Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to David Dreyer, Principal, TSD, Inc. (Mar. 16, 2001) (within Appendix I) (invitation letter); Subpoena from Comm. on Govt. Reform to David Dreyer, Principal, TSD, Inc. (Apr. 4, 2001) (within Appendix II).

[141] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

[142] Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001).

[148] *Id.*

[149] *Id.*

III. THE WHITE HOUSE'S REVIEW OF WEINIG'S COMMUTATION REQUEST

A. The Justice Department's Input in the Weinig Clemency Matter

The Justice Department repeatedly, clearly, and adamantly recommended against any reduction of Weinig's sentence, not only at and after sentencing but also during the clemency proceedings. Some time after sentencing, Weinig's defense counsel sent a 34-page letter to U.S. Attorney Mary Jo White seeking a reduction of Weinig's sentence. In response, White rejected the request out of hand. Also, when Weinig sought a commutation of his sentence from the White House, the Justice Department, through Pardon Attorney Roger Adams, voiced its opposition.

1. The U.S. Attorney Strongly Objected to Commuting Weinig's Sentence

U.S. Attorney Mary Jo White expressed her opinion on the Weinig commutation in her official comments to the Pardon Attorney. White's position was then communicated by the Pardon Attorney to President Clinton. White disputed Weinig's description of his role in the money laundering conspiracy.[150] Citing Weinig's admissions at the sentencing hearing and in the recorded conversations with Hirsch, White argued that "the evidence amply demonstrates both Weinig's knowledge of and enthusiasm to participate in this scheme."[151] White also argued that Weinig "misstates his role in the extortion scheme," and she challenged his argument that "he should be exonerated on [the misprision] count because his ethical duties as a lawyer prevented him from disclosing confidential information."[152]

White explained that "the extortion charge . . . stemmed not from Weinig's failure to interfere with the kidnapping, but rather from his affirmative efforts to conceal and further his client's extortion of Clooney."[153] White also noted that "the tapes of Weinig's conversations with Hirsch regarding the kidnapping provide perhaps the greatest example of Weinig's shocking lack of morality or care for the rule of law."[154] White described Weinig's "suggestion that New York [S]tate's ethics rules either compelled, or at least justified, his conduct" as "perverse."[155] In particular, she noted that, although Spence was Weinig's client, he plainly did not inform Weinig of the kidnapping because he was seeking legal advice.[156] White maintained that, to the contrary, Spence sought Weinig's assistance in obtaining ransom from Clooney. She observed that "[n]othing in the ethics rules governing attorney conduct in New York State (or any other state for that matter) sanctions one's *affirmative* participation in a crime, let alone the collection of ransom from a kidnap victim, which is exactly what Weinig

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[150] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 11 (Exhibit 3).
[151] *Id.*
[152] *Id.*
[153] *Id.* at 11.
[154] *Id.* at 12.
[155] *Id.*
[156] *Id.*

directed his law firm's associates to do." [157] White also noted that the Appellate Division of the State of New York, which accepted Weinig's resignation from the bar, took grave exception to his interpretation of the state's ethics rules.[158]

White also challenged Weinig's claim of entitlement to commutation because he received a longer sentence than did his co-conspirators.[159] White noted that several co-conspirators, including Gary Salerno and Tohmes Peter, received significant, comparable jail sentences for their crimes.[160] White observed that Weinig was not similar to other co-conspirators in that he was a successful attorney and, therefore, had no reason to engage in illegal activity other than "sheer greed." [161] White further noted that, contrary to co-conspirators Hirsch and Spence, Weinig repeatedly declined to cooperate with the Government and admit his guilt until immediately before trial.[162] White explained that any disparity existing between Weinig's sentence and those of his money laundering co-conspirators is explained by Weinig's active participation in the kidnapping scheme.[163] Finally, White argued that Weinig's family situation did not justify commutation of his sentence.[164] White apparently notified Judge Duffy, the judge who sentenced Weinig, of Weinig's ongoing effort to obtain presidential clemency. Judge Duffy did not comment on the petition "other than to point out that Mr. Weinig was sentenced within the Guidelines" range and that the Commutation Application contains no facts not known to the prosecution and the sentencing court at the time of conviction." [165]

2. The Pardon Attorney Objected to Commuting Weinig's Sentence

Roger Adams, the Pardon Attorney, also opposed the Weinig commutation. In his report to the President, Adams pointed out that the length of Weinig's sentence was directly attributable to the following aggravating factors: the extremely large amount of money Weinig helped to launder, Weinig's actual knowledge that the money he laundered was narcotics trafficking proceeds, and Weinig's use of his special skills as an attorney to ensure that the offense would succeed.[166] The report further stated that, but for those aggravating factors, Weinig's sentence would have been much lower.[167] The report also noted that Weinig's argument that his sentence was too severe under the sentencing guidelines was meritless because his offense (of assisting in the laundering of millions of dollars that he knew were the proceeds of drug sales) falls comfortably within the category of drug-related financial crimes that Congress sought to punish severely through the money laundering statute and its sentencing guidelines.[168]

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[157] *Id.*
[158] *Id.*
[159] *Id.* at 12.
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.* at 13.
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*

The report refuted Weinig's claim that he learned of Spence's kidnapping of Clooney only after Clooney was released. Weinig's claim is flatly disproved by his contemporaneously recorded telephone conversations with Robert Hirsch. Given that Weinig's claim indicates his unwillingness to accept full responsibility for his role in the extortion scheme, according to the report, Judge Duffy was fully entitled under the sentencing guidelines to consider this fact when determining Weinig's proper sentence.[169]

Regarding Weinig's argument that his sentence was unfair in comparison to his co-conspirators, the report notes that, inasmuch as Weinig plainly sought to downplay his involvement in the extortion scheme, he also sought to significantly minimize his role in the money laundering conspiracy, calling himself "a belated and minor participant."[170] The report correctly notes that this characterization is contrary to the evidence. Although the report concedes that Weinig was less frequently involved in the day-to-day operations of the money laundering scheme, it notes that Weinig participated in the planning and oversight of the operation, wired money when needed, assisted in recovering seized funds, and participated fully in the profits of the enterprise.[171] The report also noted that, unlike his co-conspirators, Weinig rejected repeated requests from the government for assistance and did not enter into a plea agreement until the eve of trial—nearly 10 months after his arrest and long after his co-conspirators pled guilty.[172] Accordingly, the report observes that:

> [Weinig] thus has no one but himself to blame for the fact that, unlike his co-defendants, he was not the beneficiary of a government motion for a downward departure at sentencing, since his own choices precluded him from providing the kind of assistance that would have warranted such a request.[173]

Critically, the report notes that, under those circumstances, commuting Weinig's sentence as he proposed would "significantly undermine" the government's "legitimate and important policy interests in encouraging early and complete cooperation by criminal defendants."[174]

Finally, the report maintains that Weinig's remaining arguments for clemency, those relating to a history of and potential for continued community service as well as those relating to family hardship, simply fail to distinguish Weinig from other convicted felons. The report helpfully notes that many felons have enjoyed fewer advantages than has Weinig, have served longer portions of their lengthy sentences, and have had their clemency requests denied by President Clinton. Given the foregoing and the vehement opposition of

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[169] *Id.*
[170] *Id.* at 14.
[171] *Id.*
[172] *Id. See* NARA Document Production (Letter from Mark P. Goodman, Assistant U.S. Attorney for the S.D.N.Y., for Mary Jo White, U.S. Attorney for the S.D.N.Y., Department of Justice, to John R. Wing, Member, Weil, Gotshal & Manges (Sept. 20, 1995)) (Exhibit 2) (plea agreement).
[173] *See* NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 14 (Exhibit 3).
[174] *Id.* at 14–15.

the prosecuting U.S. Attorney, the report recommended denial of Weinig's petition.

The Committee finds the Justice Department's positions, as articulated by both U.S. Attorney Mary Jo White and Main Justice, powerfully persuasive. Their positions reflect a reasoned, thoughtful deliberation of the merits of Weinig's clemency application against criteria traditionally considered when vetting clemency petitions. They also reflect a thorough understanding of Weinig's underlying conviction and the extant record. To accept Weinig's argument requires a willingness to overlook the facts of the underlying conviction and the record. Such willful blindness gives rise to the inference that the ultimate decision to commute Weinig's sentence was motivated by a factor other than the merits of Weinig's petition.

B. The White House's Deliberations

By late 2000, Weinig's clemency matter was brought before President Clinton for consideration. Despite the Justice Department's opposition to the commutation and the lack of any strong arguments in favor of the commutation, key White House staff supported the commutation. The Weinig commutation, like many of President Clinton's other final clemency grants, is remarkable for the lack of analysis that the case received at the White House. The White House seems to have ignored the strong recommendations of the Pardon Attorney and the Justice Department prosecutors and granted the commutation after only cursory consideration.

Support from John Podesta and Beth Nolan appears to have been critical to the decision to grant the Weinig commutation. Podesta had been lobbied by his former staffer, David Dreyer, and Nolan had been lobbied by Reid Weingarten. Eric Angel, an Associate White House Counsel who was working on clemency matters, recalls that Podesta "asserted himself" in favor of Weinig at a meeting with the President regarding the Weinig matter.[175] White House Counsel Beth Nolan also supported the Weinig commutation.[176] The lower-level staff in the Counsel's Office, Meredith Cabe and Angel, were not as supportive. Angel claims that he was strongly opposed to the commutation because of the seriousness of Weinig's crimes.[177] Cabe put her opposition in more gentle terms, stating simply that she was "not a big fan" of the Weinig case.[178] According to Cabe, Podesta and Nolan supported the Weinig commutation for two main reasons. First, they believed that Weinig's sentence was disproportionately long, apparently accepting the argument that Weinig was treated unfairly because his co-conspirators received lighter sentences than he did.[179] Second, one of Weinig's children was suffering from severe emotional distress as a result of his father's incarceration.[180]

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[175] Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).
[176] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).
[177] Interview with Eric Angel, former Associate Counsel to the President, the White House (Mar. 28, 2001).
[178] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).
[179] *Id.*
[180] *Id.*

By late December 2000, the White House Counsel's Office was prepared to recommend that Weinig's sentence be commuted. In a December 17, 2000, draft memorandum to the President, Beth Nolan, Bruce Lindsey, and Meredith Cabe recommended clemency but noted opposition by the office of the prosecuting U.S. Attorney.[181] A December 20, 2000, draft memorandum noted opposition by Deputy Attorney General Eric Holder and recommended that Weinig's sentence be commuted to 108 months "[s]ince [Weinig] agreed in guilty plea range should be 108–135 months[.]"[182] As the "rationale" for the recommendation, Nolan, Lindsey, and Cabe observed that "[m]ore culpable co-defendants, including the law partner who directed the kidnapping, received shorter sentences and have been released."[183] No mention is made of the substantial assistance provided by the "more culpable defendants" to investigating authorities or that a similarly situated defendant (who actively participated in the extortion by kidnapping scheme) received a sentence comparable to Weinig's. Presumably, both of these facts, as well as a correction to the misstatement that Weinig's "law partner . . . directed the kidnapping," were made in the final draft of the memorandum or orally when advising the President. It is also unclear when or why the decision was made to commute Weinig's sentence from 108 months to time served. But, drafts of "Pending Clemency Matters" noted that "Rep. By Reid Weingarten; through JDP; Harold Ickes."[184]

The only indication of the President's reasoning in the Weinig matter comes from a copy of the summary of Weinig's argument for a commutation. On a note attached to that document, President Clinton wrote, "M. Cabe—This looks meritorious[.] Advise[.]—BC."[185] At the top of the memorandum itself, President Clinton wrote, "Reduce to time served."[186] On January 20, 2001, President Clinton commuted Harvey Weinig's 11-year prison term to time served, which reduced Weinig's sentence by 66 months.

C. The White House Had No Justification for the Weinig Commutation

Weinig articulated three main reasons why he was entitled to presidential clemency: (1) that his sentence was disproportionate and excessive; (2) that his contributions to society justified his early release from prison; and (3) that one of his sons was suffering severe emotional difficulties as a result of his imprisonment. The first reason simply was not true. The other two did not justify any reduction in his sentence, much less his release from prison.

Weinig's main argument in favor of the commutation was that his sentence was disproportionate and excessive. In support of his

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[181] NARA Document Production (Draft Memorandum to the President by Beth Nolan, Bruce Lindsey, and Meredith Cabe (Dec. 17, 2000)) (Exhibit 21).

[182] NARA Document Production (Draft Memorandum to the President by Beth Nolan, Bruce Lindsey, and Meredith Cabe (Dec. 20, 2000)) (Exhibit 22).

[183] Interview with Meredith Cabe, former Associate Counsel to the President, the White House (Mar. 16, 2001).

[184] NARA Document Production (Draft Memorandum from Beth Nolan, Bruce Lindsey, and Meredith Cabe to President William J. Clinton entitled "Pending Clemency Matters") (Exhibit 23) (entry for Weinig only).

[185] NARA Document Production (Summary of Harvey Weinig's Petition for Commutation) (Exhibit 24) (note attached).

[186] *Id.*

claim, Weinig pointed to his main two co-defendants, Richard Spence and Robert Hirsch, both of whom received lighter sentences than he did and who arguably were more involved in money laundering activities. However, Weinig's sentence was stiffer than those received by Spence and Hirsch because they, unlike Weinig, cooperated with law enforcement.[187] Judge Duffy adjusted their sentences downward because they provided substantial assistance to investigative authorities.[188] Co-conspirators truly "equally culpable," including Tohmes Peter and Gary Salerno, received sentences comparable to Weinig's 135-month imprisonment term.[189]

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[187] Weinig has argued on occasion that he attempted to cooperate with the government but was rebuffed. A close examination of Weinig's claims shows them to be hollow. Between the time when Weinig entered his guilty plea and his sentencing hearing, Weinig apparently attempted to cooperate with the Government. *See* Interview with Reid Weingarten, Partner, Steptoe & Johnson (Mar. 23, 2001); NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 6–7 (Exhibit 3). Specifically, he submitted himself for debriefing regarding the money laundering operation in November 1995. At that time, he told authorities that Robert Hirsch had violated his own cooperation agreement with the government by resuming his money laundering activities. *Id*. But this fact was already well known to the federal government. Months earlier, in May 1995, and well before his guilty plea, the government already knew about Hirsch's activities and moved for revocation of Hirsch's bail. *Id.* at 7; *see* Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001). Ultimately, the federal government did reach an agreement with Hirsch whereby Hirsch agreed to plead guilty to money laundering, bank fraud, and making false statements to federal law enforcement authorities and to cooperate with law enforcement. *See* NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 7 (Exhibit 3). Under this agreement, Hirsch received a sentence of three years imprisonment under the federal sentencing guidelines. The prosecutors made this deal with Hirsch primarily because they needed his cooperation to prosecute Weinig. *See* Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001). As the U.S. Attorney informed the Pardon Attorney, "The predominant reason the Government resigned Hirsch as a cooperator was to assist in prosecuting [Weinig's] trial. If [Weinig] had admitted his guilt earlier, Hirsch would not have been resigned as a cooperating witness." NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 7 (Exhibit 3).

[188] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

[189] Peter received 97 months in prison, and Salerno received 108 months in prison. Leon and Rachel Weinmann were indicted for, among other things, money laundering and, under separate indictment, causing a $20,000 fully endorsed third-party check to be sent from New York City to Switzerland without filing a particular customs report. On May 19, 1995, they pleaded guilty to only the customs violation. U.S. Probation Office (S.D.N.Y.) Document Production (Pre-sentence Investigation Report, *U.S. v. Weinig* (S.D.N.Y. Mar. 19, 1996)) at 12 (Exhibit 1). But, prior to their sentencing, it was stipulated that (1) the Weinmanns were charged with money laundering in Switzerland; (2) the case against the Weinmanns represented the second largest money laundering prosecution in Swiss history; and (3) the Weinmanns should be extradited as soon as possible to Switzerland for prosecution there. *Id.* at 13. Accordingly, the Weinmanns waived the preparation of a presentence report; the Government declined to take a position regarding the Weinmann's sentencing; and, for the crime to which they pled guilty, the Weinmanns were sentenced by Judge Kevin T. Duffy to 1 year unsupervised probation, a $1,000 fine each, and a $50 special assessment. *Id.* The Weinmanns were then escorted to a flight to Switzerland for prosecution. *Id. See Swiss Couple to Be Extradited from United States, Official Says*, ASSOCIATED PRESS WORLDSTREAM, May 16, 1995. However, Marc Ziegler, who was then the District Attorney for the Canton of Zurich, noted substantial difficulty with his prosecution of the Weinmanns. The prosecution was intended as a test case of Switzerland's money laundering law, which was introduced in 1990. Apparently, the case against the Weinmanns in Switzerland arose out of the same facts that gave rise to the Weinmann's indictment for money laundering in the U.S. Nonetheless, as described below, many of Weinnman's co-conspirators entered into plea agreements, which precluded evidence that could have been used against the Weinmanns in their prosecution in Switzerland. Ziegler attributes his difficulties in prosecuting the Weinmanns to that factor, ambiguities in the Swiss money laundering statute, and the differences between Swiss and American evidentiary law. The current status of the Swiss case against the Weinmanns is unknown. Richard Messina, one of Weinig's co-conspirators in the scheme to extort James Clooney by kidnapping, was sentenced to 151 months incarceration and three years supervised release—a sentence comparable to Weinig's sentence. Judge Duffy sentenced both Weinig and Messina to the upper end of a recommended sentencing range of 121 to 151 months imprisonment. Judge Duffy's rationale for Messina's sentence was very similar to his rationale for sentencing Weinig, an attorney, to 135 months. He found, among other things, that Messina knowingly played a role in the extortion of Clooney and engaged in serious criminal conduct after having been disbarred. *See* Telephone Interview with Lev Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001); Appellate Brief, *U.S. v. Messina*, Docket No. 96–1789 (2d Cir. 1997) at 20 (citing to record for judge's reasons).

Indeed, in many criminal cases involving multiple co-defendants, the Government obtains cooperation from some defendants to help develop its case against others. Generally, and understandably, there arrives a point in the investigation in which the Government becomes unwilling to make available any more deals with other co-defendants. In such cases, those co-defendants choose to take their chances with the judge and the jury rather than cooperate with the Government. Until the eve of trial, this was Weinig's decision.[190] Accordingly, Weinig's citing the resulting "disproportion" between reduced sentences given to co-defendants who substantially assisted the Government and the sentences of those who decide not to is flawed because it renders his case indistinguishable from all similar cases where cooperation agreements were used to obtain evidence. In other words, Weinig cannot argue that the methods by which law enforcement gathered evidence to convict him is inherently unfair without requiring that all those cases where convictions were obtained by those same means also be reversed. Such a position is obviously untenable.

The second main argument used by Weinig as a justification for his commutation is that his humanitarian actions justified his early release from prison. The basic thrust of this argument was that, apart from his activities laundering money for the Cali cartel and participating in a kidnapping scheme, Weinig was actually a very nice person. There are several obvious flaws with this argument. First, it should not have been relevant to the President's analysis. Second, there is little evidence that Weinig was a humanitarian in any significant sense. Rather, the letters of support for Weinig in his clemency petition basically show that Weinig, like most people, had friends who liked him. While he may have been nice to his children and friends, it is difficult to ignore that he was laundering millions of dollars in drug money for the Cali cartel. The fact that Harvey Weinig consciously decided to assist and profit from the Cali cartel's efforts to distribute massive amounts of cocaine in the United States should have been both the starting and finishing point in determining his suitability for Presidential clemency. Doubtless, many families around the United States could provide tragic stories supporting the theory that a money launderer for one of the most powerful Colombian drug cartels is not the kind of person that should be described as humanitarian.

The final argument used by Weinig to support his clemency effort was that one of his children was suffering emotional difficulties as a result of his imprisonment. It appears that this argument, more than any other, had a great impact upon the President's decision to grant the commutation. John Podesta obliquely referred to this in one of his public comments about the Weinig case: "I think that people were aware of what he had done, but that ultimately, I think that based on the length of time he had served and based on a humanitarian plea, while a difficult case, it seemed like the right decision." [191]

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[190] Telephone Interview with Lev L. Dassin, former Assistant U.S. Attorney for the S.D.N.Y., Department of Justice (Nov. 26, 2001).

[191] Benjamin Weiser, *A Felon's Well-Connected Path to Clemency*, N.Y. TIMES, Apr. 14, 2001, at A1.

However, the "humanitarian plea" made by Weinig did not justify the commutation of his sentence. Thousands of criminals have families adversely impacted by the stigma of criminal conviction or the fact of incarceration. Yet, this fact should serve as a deterrent to crime, not as a reason to let criminals out of prison long before their sentences are completed. One of the letters in support of Harvey Weinig noted, "Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life." [192] If this were true, Harvey Weinig would have decided not to join a conspiracy to launder millions of dollars of drug money for, or tried to steal millions of dollars from, the Cali cartel. Weinig knew that his money laundering activity was illegal and that it, as well as his attempted theft of the cartel's drug money, exposed his family to considerable danger. He also knew that, if he was caught by authorities laundering drug money or the cartel stealing its money, he would go to prison or be harmed by the Colombian drug traffickers themselves. However, because of what U.S. Attorney Mary Jo White described as "sheer greed," Weinig participated in substantial criminal conduct that ended up harming his family immeasurably. Given that it was Harvey Weinig who harmed his family, it is unclear why that same harm should then be used to justify freeing Weinig from prison. Weinig's plea is reminiscent of the man who kills his parents and then asks for leniency because he is an orphan. Weinig's "humanitarian plea" also ignores entirely his role in bringing into the United States large volumes of drugs that harmed innumerable families.

Moreover, as Weinig's situation was no different from that of thousands of other inmates, it is hard to see why President Clinton chose to grant clemency to Weinig, rather than one of the other thousands of inmates whose families were suffering because of their incarceration. In short, the only answer is that President Clinton chose Weinig because he was the person who had the access, through his wife's cousin, David Dreyer, and his lawyer, Reid Weingarten, to make his case to the President and the White House staff.

D. Aftermath of the Weinig Commutation

President Clinton's grant of clemency to Harvey Weinig has trivialized the seriousness of Weinig's criminal misconduct. Having interviewed law enforcement personnel, it is also clear that the clemency decision has eroded morale among law enforcement personnel who put their lives on the line and work tirelessly to enforce the drug laws on a federal, state, and local level. As a policy matter, the grant of clemency has also undermined the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants.

Domestically, President Clinton's action conveyed an appearance of granting special consideration to wealthy, politically well-connected criminals and their relatives. Pardon Attorney Roger Adams

[192] NARA Document Production (Letter from Cynthia A. Hayes to the Honorable Kevin Thomas Duffy, U.S. District Court Judge (Dec. 18, 1995)) (Exhibit 25).

foresaw the message sent by the Weinig commutation, warning President Clinton that:

> To commute [Weinig's] prison term to the five years he proposes would denigrate the seriousness of his criminal misconduct, undermine the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants, and could give the appearance of granting special consideration to economically advantaged, white-collar offenders.[193]

It is difficult to disagree with Adams' conclusion. Clearly, many prison inmates have families that have been adversely impacted by their criminal activity. Yet, of all those people, Harvey Weinig received a commutation of sentence. Weinig's commutation did not come as a result of having committed some minor crime—he was a money launderer for the Cali cartel. Rather, Weinig received a commutation because he was wealthy and privileged, could hire a lawyer like Reid Weingarten, and had relatives and friends who knew the President.

On an international level, President Clinton's commutation decision has unfortunately sent the message to the world that the United States' commitment to eradicating narcotics trafficking is, to some extent, disingenuous. Former Colombian National Police Chief Rosso Serrano noted that President Clinton "sent the wrong message to the anti-drug struggle, because it negates the suffering of all the families of those who died to fight trafficking." [194] According to Serrano, "[The Weinig clemency decision is] very frustrating. [The drug traffickers] must be laughing at us. It's a terrible precedent for those of us who have openly fought this scourge." [195] In an op-ed entitled "The Morality of the Strongest" in *El Tiempo*, Colombia's leading daily, Gustavo De Greiff, a former Colombian attorney general, labeled President Clinton's clemency decision "monstrous." [196] Likewise, former Colombian president Ernesto Samper, who saw his country decertified and facing sanctions for his apparent lack of cooperation with the United States, described the clemency as "repugnant." [197] He rhetorically asked, "What would have happened if, with just a few days left in my presidency, I had set free several drug traffickers arrested in Bogota, and if those same people were found to be helping people in my government?" [198]

Indeed, President Clinton's eleventh-hour commutation of Weinig's sentence prompted government officials and the media in Colombia to accuse the U.S. government of hypocrisy. During the mid-1990s, the Clinton administration openly condemned the Colombian government's "surrender policy" toward the Cali cartel. Pursuant to the "surrender policy," the Colombian government allowed reduced prison sentences for drug kingpins who agreed to surrender. And, currently, an important element of the U.S. anti-

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[193] NARA Document Production (Report to the President on Proposed Denial of Executive Clemency for Harvey Weinig) at 15 (Exhibit 3).

[194] *Former Colombian Drug Agent Blasts Clinton's Pardon of Trafficker*, AGENCE FRANCE PRESSE, Mar. 4, 2001.

[195] *Colombian General Hits Clinton Commutation*, WASH. TIMES, Mar. 6, 2001, at A13.

[196] Russell Crandall, *The Americas: In the War on Drugs, Colombians Die, Americans Are Pardoned*, WALL ST. J., Apr. 20, 2001, at A15.

[197] *Id.*

[198] *Id.*

drug approach is the $1.3 billion U.S. commitment to Plan Colombia—President Andres Pastrana's program to recover control of the country from guerilla factions brutally dominating the Colombian countryside in furtherance of their cocaine production enterprises. But, there can be no doubt that, to the extent that eradicating narcotics trafficking is indeed important to the United States, such a commitment should be reflected in the activities of those charged with the public trust at the highest levels of elected office.

[Exhibits referred to follow:]

92747

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
vs.	)	**Docket No. S4 94 CR 981-1(KTD)**
	)	**S2 95 CR 167(KTD)**
HARVEY WEINIG	)	
	)	**Sentence Date: MARCH 22, 1996**

Prepared For: HONORABLE KEVIN T. DUFFY
U.S. District Judge

Prepared By: JINEEN M. FORBES
U.S. Probation Officer
New York City (212) 637-0040 ext. 5152

Assistant U.S. Attorney	**Defense Counsel**
Lev L. Dassin (212) 791-0302	John R. Wing, Esq. Weil, Gotshal & Manges 767 Fifth Avenue New York, NY 10153 (212) 310-8364

Offense: COUNT ONE OF S4 94 CR 981-1(KTD): CONSPIRACY TO COMMIT MONEY LAUNDERING (18 USC 1956(h)) CLASS C FELONY
COUNT THIRTY-EIGHT OF S4 94 CR 981-1(KTD): CRIMINAL FORFEITURE (18 USC 982(a)(1) and (b)(2); 21 USC 853(p))
COUNT ONE OF S2 95 CR 167(KTD): MISPRISION OF A FELONY (18 USC 4) CLASS E FELONY

Penalties: COUNT ONE OF S4 94 CR 981-1(KTD): Up to twenty (20) years imprisonment; up to three years supervised release; a maximum fine of not more than $500,000, or twice the value of the property involved in the offense; $50 special assessment.
COUNT THIRTY-EIGHT OF S4 94 CR 981-1(KTD): The defendant is subject to forfeitures in an amount up to approximately $19 million.
COUNT ONE OF S2 95 CR 167(KTD): Up to three years imprisonment; up to one year supervised release; a maximum fine of $250,000; $50 special assessment.

Release Status: Released on date of arrest (November 30, 1994), on $1 million PRB, co-signed by 3 FRPs, surrender travel documents.

Detainers: None

Related Cases: See body of report.

Codefendants: See body of report.



Identifying Data:

Date of Birth:	[redacted]	**Age:**	47
Race:	White	**S.S.# :**	[redacted]
Sex:	Male	**FBI # :**	
Marital Status:	Married	**NYSID#:**	
Education:	Post Grad. Degree	**USM # :**	
Dependents:	Two	**Other ID#:**	None
Address:	[redacted]	**Citizenship:**	U.S.

Date Prepared: DECEMBER 19, 1995 **Date Revised:** MARCH 18, 1996

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Two count Indictment 94 CR 981(KTD) was filed on December 13, 1994, in the Southern District of New York.

2. **Count One** charged that from in or about 1991, up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG, a/k/a "THE WING,"** TOHMES PETER, a/k/a "PETER THOMAS," a/k/a "MOTI," a/k/a "RENEE," JUAN GUILLERMO OCAMPO, a/k/a "PAUL," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "MR. FRED," AMPARO HURTADO VALENCIA, a/k/a "HELEN," JULIANA LNU, a/k/a "BONNIE," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "MR. R. ROSENBAUM," a/k/a "ROSENBERG," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "LUCKY," and MENASHE LEIFER, along with co-conspirators RICHARD SPENCE and ROBERT HIRSCH, not named as defendants herein, and others known and unknown, conspired to violate Sections 1956(a)(1)(B)(i), 1956(a)(2)(B)(i) and 1957 of Title 18 of the United States Code, by participating in an international money laundering organization that laundered narcotics proceeds received from, among other places, the U.S. Canada and Puerto Rico.

(18 USC 1956(h))

3. **Count Two** charged that from in or about 1991 through up to an including on or about November 30, 1994, in the Southern District of New York, and elsewhere, the above named defendants and co-conspirators not charged as defendants herein, and others known and unknown, owned and controlled properties, real and personal, which were involved in the money laundering offense charged in **Count One** and are traceable to such properties. Such interests are subject to forfeiture to the U.S., pursuant to 18 USC 982(a)(1). Such forfeitable interests include, but are not limited to: (i) any and all interests held by **HARVEY WEINIG**, in the assets of the Hirsch-Weinig law firm, located at 1540 Broadway, Suite 29A, in New York City, including, but not limited to cash, checking accounts, savings accounts, accounts receivable, trust and escrow accounts, any leasehold interest in Suite 29A, furniture, fixtures, books and equipment; (ii) any and all interests held by **HARVEY WEINIG** in the contents of a Citibank, N.A. account, in the name of **HIRSCH-WEINIG TRUST ACCOUNT**, and (iii) any and all interests held by **HARVEY WEINIG** in the contents of an account held at Bank Leumi, located in Zurich, Switzerland.

4. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, the above named defendants and co-conspirators not charged herein, and others known and unknown, owner or controlled properties real and personal which constituted and were derived from the proceeds of the money laundering offense charged in **Count One**. Such forfeitable property includes, but is not limited to, monies in excess of $15 million involved in the money laundering offense charged in **Count One**.

5. **HARVEY WEINIG**, TOHMES PETER, JUAN GUILLERMO OCAMPO, LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, AMPARO HURTADO VALENCIA, JULIANA LNU, CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, and MENASHE LEIFER, each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

6. If any of the property described in paragraphs three (3) through five (5) above as being subject to forfeiture, as a result of any act or omission of any of the defendants, (a) cannot be located upon the exercise of due diligence; (b) has been transferred to, sold to, or deposited with a third person; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; and/or (e) has been commingled with other property that cannot be subdivided without difficulty; it is the intent of the U.S., pursuant to 18 USC 982(b)(1)(A), incorporating by reference to 21 USC 853(p), to seek forfeiture of any other property of the defendants up to the value of the property described in clauses (a) through (e) as being subject to forfeiture.

(18 USC 982(a)(1) and 982(b)(1)(A))

7. One Count Felony Information 94 CR 1049(LLS) was filed December 22, 1994, in the Southern District of New York.

8. The Information charged that from in or about 1991 until up to and including on or about November 30, 1994, in the Southern District of New York, DANIEL CARROLL (91339/J.M. Forbes), and co-conspirators RICHARD SPENCE, **HARVEY WEINIG**, and ROBERT HIRSCH, along with others known and unknown, did conspire together to violate Section 1957 of Title 18 of the U.S. Code, by engaging in and attempting to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from narcotics trafficking.

(18 USC 1956(h))

9. On January 18, 1995, CARROLL pleaded guilty as charged, pursuant to a written plea agreement, before the Honorable Louis L. Stanton, U.S. District Judge. On June 21, 1995, CARROLL was sentenced to twenty-seven months imprisonment, which is to be followed by two years supervised release. The $50 special assessment was also imposed.

10. On January 12, 1995, one count Felony Information 95 CR 40-1(RWS), was filed in the Southern District of New York.

11. The Information charged that from in or about 1991, up to and including on or about November 30, 1994, in the Southern District of New York, JOSE TANON (91313/J. Keeter), and co-conspirators RICHARD SPENCE, **HARVEY WEINIG** and ROBERT HIRSCH, along with others known and unknown, did conspire to violate 18 USC 1957, by engaging and attempting to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from narcotics trafficking.

(18 USC 1956(h))

12. On January 27, 1995, JOSE TANON pleaded guilty as charged, before the Honorable Kathleen A. Roberts, U.S. Magistrate Judge. Sentencing remains pending.

13. ALEXANDER SCHWARTZ (91678/K. Gilliland) was named in one count Superseding Felony Information S1 94 CR 981(KTD) filed, March 17, 1995, in the Southern District of New York.

14. The Information charged that from on or about October 1993, up to and including on or about November 30, 1994, in the Southern District of New York SCHWARTZ, together with others known and unknown, conspired to violate 18 USC 1957, by engaging and attempting to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from narcotics trafficking.

(18 USC 1956(h))

15. On March 17, 1995, SCHWARTZ pleaded guilty as charged, pursuant to a written plea agreement, before the Honorable Kevin T. Duffy, U.S. District Judge. He was sentenced on September 6, 1995 to 24 months imprisonment, three years supervised release, and a $50 special assessment.

16. MENASHE LEIFER (91679/K.G. Gilliland) was named in one count Superseding Felony Information S2 94 CR 981(KTD), filed March 17, 1995, in the Southern District of New York.

17. The Information charged that from in or about October 1993, up to and including on or about November 30, 1994, in the Southern District of New York, LEIFER, along with others known and unknown, conspired to violate 18 USC 1957, by engaging and attempting to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from narcotics trafficking.

(18 USC 1956(h))

18. On March 17, 1995, LEIFER pleaded guilty as charged, pursuant to a written plea agreement, before the Honorable Kevin T. Duffy, U.S. District Judge. On October 19, 1995, LEIFER was sentenced to 20 months imprisonment, to be followed by three years supervised release. The mandatory $50 special assessment was also imposed.

19. DONALD J. HAYDEN (91702/V.Casanova-Scott) was named in three count Superseding Felony Information S3 94 CR 981(KTD), filed March 23, 1995, in the Southern District of New York.

20. Although the Government has not yet provided this office with a copy of the Superseding Information, it is known that **Counts One and Two** charged the defendant respectively, with violations of Title 18 USC 1956(h) and 982 and Title 21 USC 853(p), in connection with his participation, from in or about March 1994, through in or about November 1994, in a money laundering enterprise which received, transferred and laundered narcotics proceeds; and **Count Three**, which charged the defendant with violation of 18 USC 1343, in connection with his use of interstate wires to participate in a scheme to defraud the Automobile Club of Southern California of approximately $4,111.46, by knowingly providing false and fabricated information to the club.

21. HAYDEN pleaded guilty as charged on March 23, 1995, before the Honorable Kevin T. Duffy, U.S. District Judge. Sentencing remains pending.

22. On April 20, 1995, Thirty-Eight count Indictment S4 94 CR 981(KTD) was filed in the Southern District of New York.

23. **Count One** charged that from in or about 1991, up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, TOHMES PETER, a/k/a "PETER THOMAS," a/k/a "MOTI," a/k/a "RENEE," JUAN OCAMPO, a/k/a "PAUL," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "MR. FRED," AMPARO HURTADO VALENCIA, a/k/a "HELEN," JULIANA LNU, a/k/a "BONNIE," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "LUCKY," along with co-conspirators RICHARD SPENCE and ROBERT HIRSCH, not named as defendants herein, did conspire to violate Sections 1956(a)(1)(B)(i), 1956(a)(2)(B)(i) and 1957 of Title 18, by: (1) knowing that the property involved in certain financial transactions represented the proceeds of narcotics trafficking, conducted and attempted to conduct, financial transactions which were designed to conceal and disguise the nature, location, source, ownership and control of the proceeds of narcotics trafficking; (2) by transporting, transmitting and transferring funds from the United States to a place outside of the United States, knowing that the funds involved were the proceeds of narcotics trafficking and that said transfer was designed to disguise and conceal the nature and source of the proceeds; and (3) by engaging in monetary transactions with criminally derived property with a value greater than $10,000.

(18 USC 1956(h))

24. **Counts Two through Twenty-Two** charged that from on or about January 14, 1994, through on or about September 3, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, LEON SHULUM WEINMANN, RACHEL WEINMANN, GARY SALERNO, AND LATCHEZAR CHRISTOV, a/k/a "LUCKY," knowing that the property involved in certain financial transactions represented the proceeds of narcotics trafficking, did conduct the movement, pickup, transportation, transfer, delivery receipt and transmission of cash on the approximate dates and in the approximate amounts set forth below, knowing that the transactions were designed to conceal the nature, location, source, ownership and control of the proceeds of narcotics trafficking:

COUNT	APPROX. DATES	APPROX AMTS	DEFENDANT
Two	01/14 - 01/17/94	$ 676,392	SALERNO
Three	03/29 - 03/30/94	$ 590,567	CHRISTOV
Four	04/11 - 04/13/94	$ 273,000	CHRISTOV

Five	04/19 - 05/31/94	$ 800,000	**WEINIG**
Six	06/08/94	$ 695,000	L. WEINMANN, R. WEINMANN
Seven	06/09/94	$1,038,000	CHRISTOV
Eight	06/10/94	$ 970,000	L. WEINMANN, R. WEINMANN
Nine	06/19/94	$ 500,000	SALERNO
Ten	06/22/94	$ 465,000	L. WEINMANN, R. WEINMANN
Eleven	06/27/94	$ 850,000	**WEINIG**
Twelve	06/28/94	$ 261,312	**WEINIG,** L. WEINMANN R. WEINMANN
Thirteen	06/29/94	$ 294,507	**WEINIG,** L. WEINMANN R. WEINMANN
Fourteen	07/01/94	$ 240,180	**WEINIG,** L. WEINMANN R. WEINMANN
Fifteen	07/07/94	$ 600,000	**WEINIG**
Sixteen	07/19/94	$ 930,000	**WEINIG**
Seventeen	07/19/94	$ 900,000	**WEINIG**
Eighteen	08/05/94	$ 490,000	SALERNO
Nineteen	08/09/94	$ 405,000	**WEINIG**
Twenty	08/15/94	$ 999,750	SALERNO
Twenty-one	08/22/94	$ 999,545	SALERNO
Twenty-two	09/03/94	$ 755,668	SALERNO

(18 USC 1956(a)(1)(B)(i) and 2)

25. **Counts Twenty-three through Twenty-nine** charged that from on or about June 8, 1994, through on or about July 19, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, LEON SHULUM WEINMANN and RACHEL WEINMANN, transported, transmitted, transferred and attempted to transfer funds from the United States to a place outside of the United States, knowing that the funds represented the proceeds of narcotics trafficking, and knowing that such transportation was designed to conceal and disguise the nature, location, source, ownership and control of the proceeds, as follows:

COUNT	APPROX. DATES	APPROX AMTS	DEFENDANT
Twenty-three	06/08/94	$ 695,000	L. WEINMANN R. WEINMANN
Twenty-four	06/10/94	$ 970,000	L. WEINMANN R. WEINMANN
Twenty-five	06/22/94	$ 465,000	L. WEINMANN R. WEINMANN
Twenty-six	06/28/94	$ 261,312	**WEINIG** L. WEINMANN R. WEINMANN
Twenty-seven	06/29/94	$ 294,507	**WEINIG** L. WEINMANN R. WEINMANN
Twenty-eight	07/01/94	$ 240,180	**WEINIG** L. WEINMANN R. WEINMANN
Twenty-nine	07/19/94	$ 900,000	**WEINIG**

(18 USC 1956(a)(2)(B)(i) and 2)

26. **Count Thirty** charged that between September 20, 1994 and on or about September 22, 1994, in the Southern District of New York, **HARVEY WEINIG**, knowing that the property involved in certain financial transactions represented the proceeds of narcotics trafficking, did deliver approximately $200,000 in cash to ROBERT HIRSCH, the deposit of said cash at a bank in New York and the wire transmission of said cash from that bank to accounts abroad, knowing that the transaction was designed to conceal the nature and source of the proceeds.

(18 USC 1956(a)(1)(B)(i) and 2)

27. **Count Thirty-one** charged that on or about October 4, 1994, in the Southern District of New York, **HARVEY WEINIG**, knowing that the property involved in a financial transaction represented the proceeds of narcotics trafficking, wire fraud and theft, did deliver approximately $248,920 in cash to ROBERT HIRSCH, for deposit at a bank in New York and subsequent wire transmission of said cash from that bank to accounts abroad, knowing that the transaction was designed to conceal the nature and source of the proceeds.

(18 USC 1956(a)(1)(B)(i) and 2)

28. **Count Thirty-two** charged that between September 20, 1994 and on or about September 22, 1994 in the Southern District of New York, **HARVEY WEINIG** gave ROBERT HIRSCH approximately $200,000 which **WEINIG** had obtained by theft and fraud for the express purpose of transferring the money in interstate and foreign commerce, and which money was then transferred by wire from New York to accounts abroad.

(18 USC 2314 and 2)

29. **Count Thirty-three** charged that on or about October 4, 1994, in the Southern District of New York, **HARVEY WEINIG** provided ROBERT HIRSCH with approximately $248,920, which **WEINIG** had obtained by theft and fraud for the express purpose of transferring the money in interstate and foreign commerce, and which money was then transferred by wire from New York to accounts abroad.

(18 USC 2314 and 2)

30. **Count Thirty-four** charged that from on or about April 4, 1994, through on or about April 19, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, along with ROBERT HIRSCH and RICHARD SPENCE, not named as defendants herein , devised and carried out a scheme through which they collected approximately $2.4 million on behalf of their clients and customers, fabricated a criminal indictment to falsely create the impression that SPENCE had been arrested and his assets frozen by the United States, and then stole from their clients and customers, the money that had been collected, rather than remitting the money to those clients and customers.

(18 USC 1343 and 2)

31. **Count Thirty-Five** charged that on of about February 14, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, along with ROBERT HIRSCH and RICHARD SPENCE, not named as defendants herein, caused a claim of ownership to be filed with the DEA concerning the seizure of approximately $267,830 in cash from defendant ALEXANDER SCHWARTZ by the DEA in San Juan, Puerto Rico, in which SPENCE falsely stated in a sworn affidavit prepared and drafted by and at the specific request of **WEINIG** and HIRSCH, among other false statements, that the money seized by the DEA was owned by SPENCE and that it represented "a portion of the proceeds of payment due to [SPENCE] for a sale of precious stones acquired and sold overseas."

(18 USC 1001 and 2)

32. **Count Thirty-Six** charged that on or about March 24, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, along with ROBERT HIRSCH and RICHARD SPENCE, not named as defendants herein, caused a claim of ownership to be filed with the DEA concerning the seizure of approximately $676,392 in cash from defendant GARY SALERNO by the DEA in Houston, Texas, in which SPENCE falsely stated in a sworn affidavit prepared and drafted by and at the specific request of **WEINIG** and HIRSCH, among other false statements, that the money seized by the DEA was owned by SPENCE and that it represented "a portion of the proceeds due to [SPENCE] for a sale of precious stones acquired and sold overseas."

(18 USC 1001 and 2)

33. **Count Thirty-Seven** charged that on or about July 13, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, along with ROBERT HIRSCH and RICHARD SPENCE, not named as defendants herein, caused two claims of ownership to be filed with the DEA concerning the seizure of approximately $802,893 in cash from defendant ALEXANDER SCHWARTZ and approximately $1,053,200 in cash from defendant CHARLES BRUNO by the DEA in Houston, Texas, in which SPENCE falsely stated in a sworn affidavit prepared and drafted by and at the specific request of **WEINIG** and HIRSCH, among other false statements, that the money seized by the DEA was owned by SPENCE and that it represented "a portion of the proceeds due to [SPENCE] for a sale of precious stones acquired and sold overseas."

(18 USC 1001 and 2)

34. **Count Thirty-Eight** charged that from in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, **HARVEY WEINIG**, TOHMES PETER, a/k/a "PETER THOMAS," "MOTI," "RENEE," "JUAN GUILLERMO OCAMPO, a/k/a "PAUL," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "MR. FRED," AMPARO HURTADO VALENCIA, a/k/a "HELEN," "JULIANA LNU," a/k/a "BONNIE," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "LUCKY," the defendants, and co-conspirators RICHARD SPENCE and ROBERT HIRSCH, not charged as defendants herein, and others known and unknown, owned and controlled properties, real and personal which were involved in the money laundering offense charged in **Count One** and are traceable to such properties. Such interests are subject to forfeiture to the United States, pursuant to 18 USC 982(a)(1).

(18 USC 982(a)(1) and 982(b)(1)(A))

35. On September 21, 1995, LATCHEZAR CHRISTOV pleaded guilty to Counts One and Thirty-Eight of S4 94 CR 981-13(KTD), pursuant to a written plea agreement. Sentencing is scheduled for February 14, 1996.

36. RICHARD SPENCE was named in six count Superseding Information 95 CR 380(KTD), filed May 4, 1995, in the Southern District of New York.

37. SPENCE subsequently pleaded guilty as charged on May 11, 1995, before the Honorable Kevin T. Duffy, U.S. District Judge, and continues in remand, while awaiting sentencing, which remains pending.

38. On May 19, 1995, Information (S5) 94 CR 981(KTD) was filed in the Southern District of New York.

39. The Information charged that in October 1993, LEON SHULUM WEINMANN and RACHEL WEINMANN caused a $20,000 fully endorsed third party check to be sent from New York City, a place in the United States to Zurich, Switzerland, without filing a Report of International Transportation or Currency or Monetary Instruments, Customs Form 4790, as required by 31 C.F.R. § 103.23.

(31 U.S.C. § 5316(a)(1)(A), 5322(a);
31 C.F.R. § 103.23; 18 U.S.C. § 2)

40. On May 19, 1995, LEON SHULUM WEINMANN and RACHEL WEINMANN pleaded guilty as charged in the Information, before the Honorable Kevin T. Duffy, U.S. District Judge, pursuant to individual, similar, written plea agreements.

41. It was also stipulated for both WEINMANNs that they had previously been charged with Money Laundering in Switzerland, and that they agreed to return to Switzerland immediately to address those charges; additionally, the U.S. Attorney's office agreed with the Swiss government to resolve this case promptly so that these defendants would be able to immediately return to Switzerland to address charges there. In this regard, the parties waived the preparation of a pre-sentence report. In light of the unique circumstances of the WEINMANN's case, the Government agreed not to take a position with respect to the WEINMANN's sentencing.

42. On May 19, 1995, LEON SHULUM WEINMANN and RACHEL WEINMANN were sentenced to 1 year unsupervised probation, a $1,000 fine (each), and a $50 special assessment. It was represented that after the fines were paid, the WEINMANNs were escorted to a flight to Switzerland and their departure to that country was verified.

43. The Government has represented that it is noteworthy to mention that this case represents the second largest money laundering case in Swiss history. As such, Swiss officials urged the Government to release the WEINMANNs. This was requested, and complied with, for the sole purpose of addressing the pending prosecution in that country.

44. GARY SALERNO subsequently pleaded guilty to Count One only of 94 CR 981(KTD), on December 21, 1995, before the Honorable Kevin Thomas Duffy, U.S. District Judge. Sentencing remains pending.

45. One count Felony Information S2 95 CR 167(KTD), was filed on September 21, 1995, in the Southern District of New York.

46. The Information charged that from on or about November 15, 1994, through on or about February 8, 1995, in the Southern District of New York, **HARVEY WEINIG**, having knowledge of the abduction of James Clooney as a means of extorting the payment of approximately $237,000, in violation of 18 USC 1951, did knowingly conceal and not make the felony known to any person in civil or military authority under the United States.

(18 USC 4 and 2).

47. On September 21, 1995, **WEINIG** pleaded guilty to Counts One and Thirty-Eight of S4 94 CR 981-1(KTD), and as charged in S2 95 CR 167(KTD), pursuant to a written plea agreement, before the Honorable Kevin T. Duffy, U.S. District Judge. Sentencing is scheduled for March 22, 1996.

48. Pursuant to a letter from Assistant U.S. Attorney Mark P. Goodman, to John R. Wing, Esq., dated September 20, 1995, the prosecution and defense have agreed that in consideration of the defendant's plea to the above noted offenses, at the time of sentencing, the Government will move to dismiss the remaining twenty-one counts against the defendant in S4 94 CR 981(KTD) and to dismiss Indictment S1 95 CR 167(KTD) in its entirety.

49. With respect to the guidelines, the parties have stipulated that:
Count One of S4 94 CR 981-1(KTD)--The Money Laundering Conspiracy:

a. Count One charges a conspiracy to launder money, in violation of 18 USC 1956(h). Because two of the objects of the conspiracy are violations of 18 USC 1956(a)(1)(B)(i) and 1956 (a)(2)(B)(i), Sentencing Guidelines §2S1.1(a)(2) is applicable, resulting in a base offense level of 20;
b. The defendant knew or believed, or acted with a conscious purpose to avoid learning the truth, that the funds were the proceeds of unlawful activity involving the manufacture, importation, and distribution of narcotics, resulting in a three-level increase, pursuant to §2S1.1(b)(1);

c. The value of the funds laundered by the defendant and his co-conspirators was approximately $19 million, resulting in a nine-level enhancement, in accordance with §2S1.1(b)(2)(K);

d. As an attorney licensed to practice law in the State of New York, the defendant abused a position of trust and/or used a special skill in the commission of the offense, resulting an enhancement of two-levels pursuant to Section 3B1.3;

e. In accordance with paragraphs a through d, the total offense level for Count One is 34. (However, under the U.S. Sentencing Commission's proposed amendments to the guidelines, the defendant's base offense level would be 12, pursuant to 2S1.1(a)(2); there would be a 17 level enhancement based on the amount of money laundered [$19 million], pursuant to §2S1.1(a)(2) and the table located in Section 2F1.1; there would be an additional 2 level enhancement, in accordance with

§2S1.1(b)(1)(A) because the transactions were designed in whole or part to conceal or disguise the proceeds of criminal conduct; 2 levels would be warranted, in accordance with 2S1.1(b)(1)(B)(A) and (B) because the offense involved the movement of funds through a company or financial institution outside of the United States, and otherwise involved a sophisticated form of money laundering; there would be a 2 level enhancement for abuse of trust and special skill [3B1.3]; and there would be a 3 level reduction for acceptance of responsibility, in accordance with §3E1.1(b). Accordingly, under the proposed amendments, the applicable offense level for Count One would be 32).

Count One of S2 95 CR 167(KTD)-- The Misprision of Felony Information:

a. Sentencing Guidelines Section 2X4.1 ia applicable to this offense and provides for a base offense level of nine (9) levels lower than the offense level for the underlying offense.

b. The underlying offense is obstructing, delaying and affecting commerce by participating in a scheme to extort money and property in violation of 18 USC 1951, to which U.S. S.G. §2B3.2 is applicable, which results in a base offense level of 18. The amount of money the participants in the scheme attempted to extort was approximately $237,000, resulting in a two-level enhancement, in accordance with §§2B3.2(b)(2) and 2B3.1(b)(6)(C). A person was abducted to facilitate commission of the offense, resulting in a four-level increase, pursuant to §2B3.2(b)(5)(A). Accordingly, the base offense level for the underlying offense of extortion is 24.

c.Section 2X4.1 directs that nine levels be subtracted from the base offense level for the underlying offense, resulting in an offense level of 15.

Multiple Count Analysis

a The offenses of conviction as noted above may not be grouped, in accordance with 3D1.2;

b. Because, as set forth above, the offense level applicable to Count One of S4 94 CR 981-1(KTD) is nine or more levels higher than the offense level for S2 95 CR 167(KTD), the combined offense level for both counts is 34, pursuant to §3D1.4;

c. By pleading guilty in a timely manner and allocuting to the satisfaction of the Court, **WEINIG** will have demonstrated a "recognition and an affirmation of personal responsibility for his criminal conduct," and will have permitted the Government to avoid additional preparation for trial, thereby permitting the Court to allocate its resources efficiently, thus warranting a three-level reduction for Acceptance of Responsibility, in accordance with §3E1.1(b).

In accordance with paragraphs a through c above, the total offense level for all of the offenses is 31.

50. Based upon the information now available to the Government, including representations made by the defense, the defendant has no prior criminal convictions and a Criminal History Category of I is applicable.

51. Based on a total offense level of 31 and a Criminal History Category of I, the guideline range of imprisonment is from 108 to 135 months.

Forfeiture

52. It is understood by the parties that pursuant to 18 USC 982, the defendant agrees to forfeit to the United States all right, title and interest that he has in the following assets and/or properties (which constitute both the proceeds of, and a portion of the aggregate value of the monies handled by the conspirators in the course of, the money laundering offense described in Count One of S4 94 CR 981(KTD): (i) the real property and building known as 48 Maidstone Lane, Amagansett, New York; (ii) approximately $695,827 in U.S. currency provided by Robert Hirsch to the Government on or about September 22, 1994; (iii) approximately $248,920 in U.S. Currency provided by Robert Hirsch to the Government on or about October 4, 1994; (iv) the contents of the account in the name of **"HARVEY WEINIG"** located at Bank Leumi, Zurich, Switzerland, bearing the account number [redacted] (v) the contents of the account in the name of "Transglobal Commercial Credit Corp.," located at Swissbank Corporation, Chur, Switzerland, bearing the account number [redacted]; (vi) the assets of Hirsch Weinig, formerly located at 1540 Broadway, Suite 29A, New York, New York ("Hirsch Weinig"), including, but not limited to cash, checking accounts, savings accounts, trust and escrow accounts, any leasehold interest in Hirsch Weinig, fixtures, books, equipment and accounts receivable; and (vii) the contents of the account in the name of Hirsch-Weinig Trust Account located at Citibank, New York, New York,

bearing the account number [redacted]; it is understood, however, that prior to conveying his interest in the aforementioned assets and/or properties to the United States, the defendant shall use the proceeds and/or contents of those assets and/or contents of those assets and/or properties to pay, through Bart M. Schwartz, Esq. the monitor of Hirsch Weinig, current Hirsch Weinig liabilities in the sum of approximately $10,000 in trade accounts payable, approximately $25,000 to David Robinson, Esq., for his representation of Hirsch Weinig in the matter captioned Berger Steingut & Stern v. Hirsch Weinig, et al., No. 120945/93, and approximately $45,000 to Berger Steingut & Stern in settlement of the matter captioned Berger Steingut & Stern v. Hirsch Weinig, et al., No. 120945/93. The defendant agrees to take all necessary action to place these assets in the possession custody and control of the United States.

53. The parties agree that neither an upward nor downward departure is warranted.

54. The stipulations are not binding on the Court or Probation Department.

55. As the instant offenses occurred after November 1, 1987, the Sentencing Reform Act of 1984 is applicable.

Related Cases

56. See Offense Section of the report, as outlined below.

The Offense Conduct

57. The purpose of this offense section is to provide an overview of the instant offense. Specific offense behavior of individual defendants will be discussed in their respective presentence reports.

58. Beginning in February 1994, the FBI, Drug Enforcement Administration (DEA), and the New York City Police Department (NYPD), have been jointly investigating a substantial international money laundering organization ("the Organization") which has laundered tens of millions of dollars in narcotics proceeds in the U.S. This investigation involved DEA seizures of money in the U.S. and Puerto Rico; the assistance of a confidential informant (CI); the use of undercover agents and physical surveillance.

59. Additionally, the above named law enforcement agencies have relied on reviews of various public documents; numerous consensually recorded telephone conversations; and interceptions made during an SDNY narcotics wiretap investigation which commenced on or about May 10, 1994.

60. According to the case agent, when discussing their conduct over the telephone, the defendants used code words during their conversations in an attempt to disguise the true nature of their conversations; therefore, when discussing currency, the defendants referred to same as "paper;" and the term "container," was used to refer to units of $1 million dollars.

Overview of the Organization--Roles of the Participants

61. At all relevant times, **HARVEY WEINIG** was a lawyer licensed by and practicing in, New York State and was one of the principals, along with co-conspirator ROBERT HIRSCH, in the firm of **Hirsch-Weinig**, located at 1540 Broadway, Suite 29A, in New York City. The **Hirsch-Weinig** law firm was used in part by the Organization to conceal its illegal activities. **WEINIG**, who was identified by the case agent as one of the leaders of the Organization, operated primarily out of his offices at the law firm, where he engaged in, among other things, banking transactions on behalf of the Organization and consulted with co-conspirators ROBERT HIRSCH and RICHARD SPENCE, a/k/a "DICK," a/k/a "CHARLIE," about the Organization's activities.

62. Additionally, consensually monitored conversations as well as information provided by the CI, revealed that **WEINIG** stored the proceeds of his money laundering activities in his apartment, located at 110 Riverside Drive, in New York City.

63. ROBERT HIRSCH was also an attorney licensed by, and practicing in, New York State. HIRSCH operated out the offices he shared with **WEINIG** and performed various tasks on behalf of the Organization, including coordinating money laundering activities with SPENCE in New York, and with PETER, OCAMPO and the WEINMANNS in Europe.

64. CHAIM HERMAN, another leader of the Organization in the U.S., was primarily responsible for all cash pick-ups in the U.S. and for transferring cash from the United States to the WEINMANNS in Switzerland. HERMAN later worked with SPENCE laundering money on behalf of the Organization.

65. According to the case agent, RICHARD SPENCE was one of the leaders of the Organization in the United States and was responsible for organizing money pickups, depositing large sums of cash into bank accounts without raising suspicion, and transferring that cash to various accounts via wire transfers. SPENCE, a former New York City fireman, operated several businesses at [redacted] Bronx, New York, including a trucking company, a beer distributorship, and a home oil heating company. According to the Government, this location was also used in part by the Organization to further and to conceal its illegal activities.

66. TOHMES PETER, a/k/a "PETER THOMAS," a/k/a "MOTI," a/k/a "RENEE," and JUAN GUILLERMO OCAMPO, a/k/a "PAUL,"operated primarily in Germany, where they conferred with various members of the Organization, including LEON SHULUM WEINMANN, RACHEL WEINMANN, HIRSCH and SPENCE. According to the case agent, TOHMES PETER and OCAMPO formerly resided together in Mulheim, Germany. TOHMES PETER has also been identified by the agent as one of the Organization's leaders.

67. As previously noted, JUAN GUILLERMO OCAMPO, who is also a leader of the Organization in Europe along with TOHMES PETER, resided in and operated out of Mulheim, Germany. According to the case agent, OCAMPO was previously convicted in New York State of Criminal Sale of a Controlled Substance, and was sentenced to five years to life imprisonment; he was subsequently released on parole in or about May, 1987. The defendant was subsequently re-arrested in Colombia, South America on or about September 29, 1994.

68. LEON SHULUM AND RACHEL WEINMANN received transfers of funds in Switzerland on behalf of the Organization and remitted the funds to bank accounts designated by the Organization's customers.

69. MIGUEL OMAR GARRABITO BOTERO, a/k/a "MR. FRED;" AMPARO HURTADO VALENCIA, a/k/a "HELEN;" JULIANA LNU [Last Name Unknown], a/k/a "BONNIE;" and CARLOS LOPEZ, resided in and operated from Colombia, South America, where they were responsible for among other things, ensuring that funds laundered by the Organization were eventually remitted to the Organization's customers. According to the case agent, all of these defendants are considered the leaders of the Colombian wing of the Organization and all are believed to be associated with the Cali cocaine cartel in Colombia.

70. The remaining co-conspirators have been labeled "couriers" or "other key members of the Organization."

71. MICHAEL T. KALANZ, a/k/a "MIKE THE COP," is a police officer currently assigned to the 48th Precinct in the Bronx. KALANZ, among other things, was responsible for counting and storing substantial amounts of currency and transporting it to banks on behalf of the Organization. According to the case agent, KALANZ has stored hundreds of thousands of dollars in his locker at the Precinct.

72. GARY SALERNO was responsible for, among other things, picking up and transporting narcotics proceeds for the Organization. In addition, SALERNO acted as an enforcer for the Organization, intimidating and collecting money from various individuals.

73. On July 21, 1994, SALERNO was arrested by the New York City Police Department and charged with Extortion Involving Physical Injury and Attempted Grand Larceny. This case is currently pending.

74. On November 16, 1994, SALERNO was arrested in the Eastern District of New York (94 Mag. Dkt. No. 1790), charging him with a Conspiracy to Traffick in Firearms, in violation of 18 USC 371 and 922(g). On that same day, a search of the defendant's residence revealed that he possessed what was labeled by the agent as a "hitman's kit," containing a garrotte, which is a device used to strangle and sever the vocal chords of its intended victim; three pairs of handcuffs; ammunition; and a law enforcement badge bearing someone else's name. Additionally, a handgun, two rifles, ammunition and a bugging device, among other things were recovered during the search.

75. CHARLES BRUNO, is a New York City fireman, currently assigned to Engine Company 307, in Queens, New York. He has also been identified as a courier for the Organization.

76. DANIEL CARROLL, JOSE TANON, who was employed by RICHARD SPENCE, and ALEXANDER SCHWARTZ, a/k/a MR. R. ROSENBAUM;" a/k/a "ROSENBERG," who is also a Rabbi, travelled to various cities in the United States and abroad to pick up narcotics proceeds for the Organization and return the proceeds to New York City. CARROLL was described as one of SPENCE'S "most trusted couriers."

77. DONALD J. HAYDEN received large quantities of cash at his office at Laidlaw Equities, located at 100 Wilshire Boulevard, Santa Monica, California, which he then shipped via Federal Express to SPENCE in New York. According to the National Association of Securities Dealers, HAYDEN is a registered representative for Laidlaw Equities, a full service brokerage firm that obtains private funds for investing in commodities.

78. LATCHEZAR CHRISTOV, a/k/a "LUCKY," is also a registered representative for Laidlaw Equities, and like HAYDEN, received narcotics proceeds and other cash in California, which he then shipped via overnight mail services to New York. CHRISTOV is also reportedly Honorary Consul general for the Republic of Bulgaria and was accredited by the Bulgarian Government to this position on or about October 1, 1993. (According to the case agent, this defendant is a part-time employee of the Republic of Bulgaria and has "personal inviolability only in connection with official acts and enjoys only the more restricted form of official acts immunity accorded U.S. nationals or permanent residents, and immunity from the obligation to provide evidence as witnesses only in respect of official acts").

79. MENASHE LEIFER, who is also reportedly a Rabbi, worked with SPENCE and HERMAN, and operated in New York, where, among other things, he transported narcotics proceeds and performed various other tasks in furtherance of the Organization's activities.

80. ROBERT JANZ, a/k/a "BOBBY," was responsible for bringing cash that had been received and counted by the Organization to a bank for deposit and sometimes acted as a courier. JANZ was also employed as a dispatcher by SPENCE.

81. SYLVIA EZELL was employed as a secretary for SPENCE at his office and made arrangements on behalf of the Organization to pick up, transport, and wire transfer the proceeds of illegal narcotics trafficking.

82. PATRICIA DILLUVIO was employed as an Assistant Branch Manager for Citibank located at 1010 Morris Park Avenue, Bronx, New York. She accepted large sums of cash brought by other members of the Organization and transferred the funds through various accounts on behalf of the Organization.

THE ORGANIZATION

83. As previously written, the Organization was comprised of over thirty members, and was based in various cities around the world, including, but not limited to Mulheim, Germany; Zurich Switzerland; Cali, Colombia; Los Angeles, California; and New York City, and was responsible for laundering tens of millions of dollars in narcotics proceeds. The Organization also picked up, transported and laundered narcotics proceeds generated in Canada and Puerto Rico. To date, the Government has seized approximately $4,984,064 in narcotics proceeds from members of the Organization.

84. The Organization has been laundering narcotics proceeds in the U.S. for at least three years. Typically, a member of the Organization was contacted by narcotics traffickers or their representatives, who arranged to drop-off a sum of money, ranging from tens of thousands, to hundreds of thousands of dollars, on the street or in a hotel room in a given city. A member of the Organization was then sent to the location to retrieve the proceeds and, if the pick-up took place outside of New York City, would return to New York with the money. Narcotics proceeds that were picked up in New York City or returned to the City were then turned over to one of the Organization leaders, who would count and deposit the money into a bank account from which it was then transferred by wire or otherwise to Europe or elsewhere. In exchange for their services, Organization members would receive a percentage of the amount of funds laundered for any particular customer.

85. During the course of the conspiracy, methods used and members of the Organization changed. According to the Government, in the early stages of the Organization's operation in the U.S., CHAIM HERMAN was primarily responsible for picking up money to be laundered in the U.S., Puerto Rico, and Canada and then transferring the money to the WEINMANNS, in Zurich, Switzerland. Eventually, PETER, or OCAMPO began to contact SPENCE and later HIRSCH, when there was cash to be picked up in any of the above noted territories. After PETER and OCAMPO began contacting HIRSCH as their primary contact in the U.S., HIRSCH would contact SPENCE, who would arrange for the cash to be picked up and brought back to him in New York.

86. Couriers sent by SPENCE would pick up bundles of money in suitcases or boxes and transport them back to SPENCE'S place of business. If the pick up was made outside of New York, a courier would either personally carry the money back to New York, or would send the money back via overnight mail services, like Federal Express. Once the cash was received at SPENCE'S business, SPENCE would arrange, through one or more bank employees, who were also part of the conspiracy, to have the cash to be deposited into bank accounts, including accounts controlled by SPENCE, as well as WEINIG and HIRSCH. The three defendants would subsequently have the funds transferred by wire to the WEINMANNS in Switzerland, or to one of several other accounts. The WEINMANNS would then send the funds to bank accounts designated by the Organization's customers.

87. As previously noted, from at least 1991 through the November 1994, the Organization had been picking up large quantities of cash in various cities throughout the U.S. Puerto Rico, Canada and Europe. On various occasions, couriers had been stopped by law enforcement officials and the money they were carrying was seized. In 1993 and 1994, couriers were arrested in San Juan, Puerto Rico, and Houston, Texas. Additionally, the Government indicated that certain members of the Organization had stolen money that they were supposed to have been laundering, and created fraudulent documents to make it appear as though the money had been seized by the Government. As a result of both the actual and fabricated seizures, some Organization members met with each other to discuss ways of avoiding seizures. Many of these meetings were observed by law enforcement agents and occasionally, Organization conversations were wiretapped and recorded.

88. According to a CI, from January 31, 1994, until February 2, 1994, the WEINMANNS, HERMAN, PETER, HIRSCH and others met in Switzerland to discuss the business of the Organization. During this meeting, the WEINMANNS and HIRSCH participated in a discussion surrounding the Organization's money laundering business. The WEINMANNS reportedly stated that they had laundered approximately $72 million, along with PETER during the previous year.

89. The CI informed that a subsequent meeting took place in Zurich, lasting from June 28 through June 30, 1994,consisting of PETER, the WEINMANNS, HIRSCH and others. During these meetings, HIRSCH--on behalf of PETER, asked the WEINMANNS to extend credit to PETER, which they reportedly agreed to do.

90. The CI informed case agents that by April 19, 1994, SPENCE had amassed about $2.5 million in narcotics proceeds that he had collected on behalf of the Organization, but rather than launder the funds as usual, SPENCE, HIRSCH and **WEINIG** kept the money, which they reportedly split amongst themselves. The three defendants then created a fraudulent Indictment relating to SPENCE and a fraudulent document purporting to reflect the seizure of the cash by DEA agents. John R. Wing, counsel for the defendant, noted that the fraudulent indictment and other documents were created by HIRSCH alone.

91. Between May 1994 and November 1994, the Organization continued in their laundering activities; however, the actual seizures by law enforcement, along with the theft of funds by Organization members, resulted in pressure being placed on the Colombian leaders of the Organization by their clients. As a result of substantial amounts of money being lost, VALENCIA AND BOTERO threatened PETER, OCAMPO and HIRSCH with physical harm, if money was not remitted as scheduled. In one instance, OCAMPO'S brother was kidnaped in Colombia. HIRSCH'S life was also threatened, after which he, **WEINIG** and SPENCE pooled some of the money that they had previously stolen and sent the money to the Organization clients awaiting remittance.

92. During the course of this conspiracy, the Government intercepted "hundreds" of conversations pertaining to the money laundering operation; surveilled at least ten (10) cash pickups by "the SPENCE organization," throughout the U.S. Canada and Puerto Rico; seized approximately $5 million; and collected evidence regarding the laundering of approximately $50 million, not including the Organization's European and South American connections.

HARVEY WEINIG

93. The defendant's role in this offense has been previously discussed above. **WEINIG** was reportedly involved in this offense from October 1993, until his arrest in November 1994.

94. On November 4, 1993, the **Hirsch-Weinig** law firm filed a civil complaint in the Eastern District of New York against the Sands Hotel on behalf of SCHWARTZ claiming that on October 6, 1993, SCHWARTZ had left a suitcase containing $260,000 with the Sands Hotel and that the hotel either wilfully or negligently allowed someone else to take it. Subsequently on February 14, 1994, SPENCE, **WEINIG** and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that, among other

things, the $267,830 seized from "Rabbi" ALEXANDER SCHWARTZ by the DEA on October 6, 1993 belonged to him and represented the proceeds of payment "for a sale of precious stones by [me] acquired and sold overseas. Rabbi Schwartz was engaged by [me] to deliver this payment to [me]." SPENCE further swore that the transaction that "was the subject of the seized payment in this matter could be typical of scores, indeed hundreds of daily transactions on 47th Street in New York City."

95. On July 13, 1994, SPENCE, **WEINIG** and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that the $1,053,200 seized from CHARLES BRUNO by the DEA on January 5, 1994 was SPENCE'S money and that "Mr. Bruno was carrying these funds as expense money for the business trip for which [I] engaged him." Additionally, on July 13, 1994, SPENCE, **WEINIG** and Hirsch filed another claim of ownership with the DEA in which SPENCE swore that the $1,010 seized from BRUNO by the DEA on January 5, 1994 was "owned by [me] and represents a portion of payment due to me for a sale of precious stones and metals acquired and sold overseas. Mr. Bruno was engaged to deliver this payment to [me]."

96. SPENCE, **WEINIG** and Hirsch also filed a claim of ownership with the DEA on July 13, 1994, in connection with the seizure of $802,893 by the DEA on January 6, 1994. In that claim, SPENCE swore that the money belonged to SPENCE "and represents a portion of the proceeds of a payment due to [me] for a sale of precious stones and metals acquired and sold overseas. Mr Schwartz was engaged to deliver this payment to [me]."

97. On March 24, 1994, SPENCE, **WEINIG** and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that $676,392 seized from GARY SALERNO by the DEA on January 14, 1994 was SPENCE's money and "represents a portion of the proceeds due to [me] for a sale of precious stones and metals acquired and sold overseas. Mr. Salerno was engaged to deliver this payment to [me]." A CI subsequently informed the case agent that in March 1994, **WEINIG**, SPENCE and Hirsch discussed how to characterize the source of the seized currency in filings made to the authorities and agreed that they would claim that the money represented the proceeds of business transactions involving diamonds and rubies.

98. According to defense counsel, the three above-noted transactions "were created by HIRSCH based on papers he had used in an earlier forfeiture matter he had handled for TOHMES PETER well before he became **WEINIG'S** partner. The papers contained a false affidavit signed by SPENCE and although [Mr.] **WEINIG** was aware of the filing of these papers, he was not personally involved in preparing or filing the papers."

99. On June 3, 1994, at approximately 1;30 p.m., during a telephone conversation between Hirsch and SPENCE, they agreed that Hirsch would give **"HARVEY [WEINIG]** some spending money," and SPENCE said that he would not "tell him anything, just give it to him."

100. On July 15, 1994, at approximately 10:48 a.m., Hirsch called **WEINIG** at his office, and said that he had done a "three-way" with the bank and that the bank had just done it. Hirsch told **WEINIG** to "leave instructions to fax the federal wire numbers." Hirsch then asked **WEINIG** whether they should wire a one-sentence confirmation, to which **WEINIG** replied that they should wait until that Monday because it was not urgent. Hirsch then informed **WEINIG** that "the urgency is that the idiot [TOHMES] PETER needs the million."

101. At approximately 5:00 p.m., on September 22, 1994, Hirsch called **WEINIG** at his office. **WEINIG** told Hirsch that BOTERO had called and then provided BOTERO's beeper and telephone numbers to Hirsch. **WEINIG** and Hirsch then discussed monies owed to certain Colombians, including BOTERO, and **WEINIG** told Hirsch that he had spoken to SPENCE and that SPENCE had assured him that approximately $200,000 that **WEINIG** and Hirsch had given to SPENCE for deposit had been sent to VALENCIA.

102. **WEINIG** also said that he had checked the Citibank account [the Transglobal account] into which the money had been deposited and had discovered that the money was still in the account, in response to which Hirsch stated that he was worried that SPENCE had not sent the money. **WEINIG** then told Hirsch not to worry because they could pay down the debt owed to VALENCIA using money from accounts in Switzerland, if necessary, to which Hirsch replied that the money in Switzerland was not theirs. **WEINIG** also said that they had money in escrow accounts and that they could send directly from their office if necessary.

103. According to case agents, the investigation revealed that **WEINIG** and Hirsch maintained two numbered accounts at Bank Leumi in Switzerland, the aggregate balance of which at the time of their conversation was approximately $320,000.

104. Also in connection with this conversation, on September 21, 1994, DEA agents conducting a surveillance observed Hirsch and EZELL entering the Morris Park Citibank in possession of a box containing approximately $200,000 in U.S. currency, and observed them leaving shortly thereafter without the box.

105. On September 22, 1994, three UCs met with SPENCE at his Florida residence. One of the UCs told SPENCE that he wanted the $500,000 in cash that SPENCE had lost returned to him or fifty kilograms. SPENCE said that he did not handle merchandise [cocaine], and that he would pay the UC the money.

106. Later that day, Hirsch called SPENCE, who said that three guys visited him, handed him items taken from his Mercedes, and asked for the "stuff" or the $500,000. Hirsch asked if they were "nasty," and SPENCE replied that they were polite. Hirsch asked if they were Colombian, and SPENCE indicated that they were. SPENCE said that he expected **WEINIG** and Hirsch to each pay a one-third share of the $500,000, and that either **WEINIG** or Hirsch had to take a ride down to Florida in order to transport the money to SPENCE.

107. Hirsch called **WEINIG** at his office on September 30, 1994, and told him that BOTERO was the principal of everyone in Colombia. Hirsch then explained the money problems arising from the debt owed to BOTERO, and **WEINIG** acknowledged the problem. **WEINIG** then said, "listen, let's not talk about this on the phone," and Hirsch responded by asking **WEINIG** for the number of **WEINIG's** private telephone line at the office. **WEINIG** then provided the number and stated that he did not believe his private line was any more secure. During their discussion, Hirsch informed **WEINIG** that the checks had been dropped off and asked if **WEINIG** had photocopied them. **WEINIG** responded that he had not photocopied the checks, but that he did have a list of where the checks had gone, and Hirsch asked **WEINIG** to put it in a facsimile to BOTERO. Hirsch said that he had explained the situation to VALENCIA with regard to BOTERO. Hirsch then told **WEINIG** that in a prior conversation he had had with BOTERO, BOTERO had implied that OCAMPO might be dead, to which **WEINIG** replied, "let's not talk about it." **WEINIG** then stated that it would be interesting to see if Hirsch heard from VALENCIA again. **WEINIG** also told Hirsch that he had a long talk with SPENCE and said that Hirsch

should not be sharing information with SPENCE because SPENCE was not being as cooperative as expected.

108. Later in their conversation, **WEINIG** asked Hirsch if BOTERO spoke english, and when Hirsch informed him that he spoke a little, **WEINIG** stated, "good, maybe we got a new client." **WEINIG** then told Hirsch that he should ask SPENCE to "get his girl on board" in case they needed her.

109. Lastly, in their conversation, **WEINIG** expressed his concern that he and Hirsch might have paid out too much money, to which Hirsch replied that they would make it back in the future.

110. On October 2, 1994, Hirsch called SPENCE and said that he had spoken with BOTERO, who said that PETER and OCAMPO had been stealing money. Hirsch stated that JULIANA LNU and BOTERO mentioned coming to New York to meet with Hirsch, and SPENCE told him that he still had records. SPENCE asked about PETER, and Hirsch said that he told them all about PETER and wanted to help them find him. SPENCE told Hirsch that he did not think it was a good idea to help them find PETER because "[I] think he can hurt us." SPENCE said that he did not think **WEINIG** would continue in the business, and Hirsch responded by saying that **WEINIG** liked "shoe boxes," [cardboard boxes containing bundles of money]. SPENCE then asked if **WEINIG** had given Hirsch money yet, to which Hirsch replied that he would get it the next day and that **WEINIG** "knows we have to pay off the Colombians...he knows we'll make it back."

111. On October 4, 1994, at approximately 10:21 a.m., agents conducting surveillance observed **WEINIG** leave his residence carrying a black nylon bag, place the bag in the trunk of a car being driven by Hirsch, and then meet with Hirsch inside of the car. The CI subsequently informed the case agent that the bag contained approximately $250,000.

112. The CI also informed the case agent that on November 15, 1994, SPENCE informed **WEINIG** that he had kidnapped someone who had swindled him in a mortgage company deal. The following day, **WEINIG** said that SPENCE was sending someone over to the offices of **Hirsch-Weinig** to resolve the matter by having him make conveyances of cash and art to SPENCE. **WEINIG** stated that he wanted to leave the office before the person with the cash and art arrived and **WEINIG** assigned another lawyer at the firm to handle the conveyances. Later that day, FBI agents conducting a surveillance outside **Hirsch-Weinig** observed a person carrying paintings into the building in which the firm

is located.

113. **WEINIG** is captured over telephone wiretaps on November 16, 1994, discussing the kidnapping of an individual identified as "Clooney," with HIRSCH. During their conversation, **WEINIG** tells HIRSCH of the crime that was purportedly carried out by GARY SALERNO, at the direction of RICHARD SPENCE. When HIRSCH tells **WEINIG** that he was obligated to report the crime, **WEINIG** stated that "I don't have an obligation. If he tells me..." And later in the conversation, "if he tells me a crime is going to be committed, then I have an obligation, I have to disclose it or go to the authorities, but he didn't do that..."

114. However HIRSCH stated to **WEINIG** that "he [SPENCE] told you he grabbed someone. We knew about it. It's okay that we knew about it..." to which **WEINIG** responded, 'I don't know anything about it. That's my position."

115. The CI informed agents that in the Summer of 1994, **WEINIG** told the CI that he stored money that he had obtained as a result of his participation in the Organization at his home at Meeting House Lane.

116. ROBERT HIRSCH was subsequently arrested in September 1994.

117. On September 29, 1994, the Colombian National Police attempted to arrest several subjects relating to an unrelated investigation. JUAN GUILLERMO OCAMPO was among those arrested at that time.

118. MIGUEL OMAR GARRABITO BOTERO; AMPARO HURTADO VALENCIA; JULIANA [LNU]; and CAROLS LOPEZ remain fugitives.

119. TOHMES PETER was arrested on November 30, 1994, in Germany. The case agent informed that PETER will be prosecuted in that country for the offense.

120. All of the remaining defendants were arrested in the United States on November 30, 1994.

Adjustment for Obstruction of Justice

121. The probation officer has no information to suggest that the defendant impeded or obstructed justice at the time of the arrest, or during the investigation or prosecution of the offense.

Adjustment for Acceptance of Responsibility

122. The defendant has provided a lengthy written statement, which has been attached to this report in its entirety.

Offense Level Computation

123. The post-November 1, 1995, U.S. Sentencing Guidelines were utilized in selecting the applicable guideline ranges.

124. Pursuant to Sections 3D1.1 and 3D1.2, the extortion charged as an underlying offense in **Count One** of S2 95 CR 167(KTD), which is covered by §2B3.2, may not be grouped with other offenses. Therefore, **Count One** of S4 94 CR 981(KTD) and **Count One** of S2 95 CR 167(KTD), will be analyzed separately below.

125. **Base Offense Level of Count One of S4 94 CR 981(KTD):** The guideline for an 18 USC 1956(h) offense is found in Section 2S1.1 of the Guidelines. As two of the objects of the conspiracy charged in **Count One** were violations of 18 USC 1956(a)(1)((B)(i) and 1956(a)(2)(B)(i), Section 2S1.1(a)(2) is applicable to this offense and has a base offense level of 20. 20

126. **Specific Offense Characteristics:** As the defendant knew or believed [or acted with a conscious purpose to avoid learning the truth], that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, a three-level enhancement is warranted, in accordance with the provisions of §2S1.1(b)(1). +3

127. **Specific Offense Characteristics:** In accordance with §2S1.1(b)(2)(J), a nine-level enhancement is warranted because the value of the funds was more than $10 million, [but less than $20 million]. +9

128. **Victim Related Adjustments:** None 0

129. **Adjustment for Role in the Offense:** As the defendant is an attorney, he possesses a "special skill" as defined by §3B1.3, Application Notes 1 and 2 (Abuse of Position of Trust or Special Skill); further, Weinig apparently used this skill to cause false claims to be filed by other co-conspirators and caused to be prepared, false affidavits which were presented to the DEA to make false representations regarding money laundered by the co-conspirators. Therefore, a two-level enhancement appears to be warranted, in accordance with the provisions of §3B1.3. +2

130. **Adjustment for Obstruction of Justice:** None 0

131. **Adjusted Offense Level -- Count One of S4 94 CR 981(KTD)(Subtotal):** 34

132. **Count One of S2 95 CR 167(KTD):**

133. **Base Offense Level:** The guideline for an 18 USC 4 offense is found in Section 2X4.1, Misprision of a Felony, of the guidelines, and provides for a base offense level that is nine (9) levels lower than the offense for the underlying offense.

134. The underlying offense is obstructing, delaying and affecting commerce by participating in a scheme to extort money and property, in violation of 18 USC 1951, which is covered by U.S.S.G. §2B3.2. The base offense level under 2B3.2 is 18; the amount of money the participants in the scheme attempted to extort was approximately $237,000, resulting in a specific offense characteristic increase of two-levels (2B3.2(b)(2) and 2B3.1(b)(6)(C); a person was abducted to facilitate commission of the offense, resulting in a four-level increase (2B3.2(b)(5)(A)). Therefore, the total offense level for the underlying offense is 24.

135. As §2X4.1 requires subtracting nine-levels from the base offense level of the underlying offense, the base offense level for this offense shall be 15. 15

136. **Specific Offense Characteristics:** None. 0

137. **Victim Related Adjustments:** None. 0

138. **Adjustment for Role in the Offense:** 0

139. **Adjustment for Obstruction of Justice:** 0

140. **Adjusted Offense Level for** Count One of S2 95 CR 167(KTD) **(Subtotal):** 15

DETERMINING THE COMBINED OFFENSE LEVEL:

141. The combined offense level is determined by taking the offense level applicable to the Group with the highest offense level and increasing the offense level by the amount of units indicated in the table in Section 3D1.4.

Adjusted Offense Level for the First Group of Closely Related Counts:

142. Count Number(s): Count One of S4 94 CR 981(KTD): 34 1 Unit

Adjusted Offense Level for the Second Group of Closely Related Counts:

143. Count Number(s): Count One of S2 95 CR 167(KTD): 15 0 Units

144. **Total Units:** 1

145. **Increase in Offense Level Based on Total Units:** 0

146. **Greater of the Offense Levels From Above:** 34 (Count One of S4 94 CR 981(KTD))

147. **Combined Adjusted Offense Level (sum of lines 142 and 143):** 34

148. **Adjustment for Acceptance of Responsibility:** Based on the defendant's plea of guilty, it is believed that Weinig has shown recognition of responsibility for the offense; further, by pleading guilty in a timely manner, the defendant allowed the Court and Government to allocate their resources more efficiently. Therefore, a reduction of three levels for Acceptance of Responsibility is considered applicable under section 3E1.1(b). -3

149. **Total Offense Level:** 31

150. **Chapter Four Enhancements:** None 0

151. **Total Offense Level:** 31

Offense Behavior Not Part of Relevant Conduct

152. None.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

153. None known.

Adult Criminal Conviction(s)

154. A check with the FBI and the New York State Division of Criminal Justice Services, Bureau of Identification, reveals no prior criminal record for this defendant.

Criminal History Computation

155. The defendant has no known criminal convictions. Therefore, the defendant has zero criminal history points and a Criminal History Category of I.

Other Criminal Conduct

156. None known.

Pending Charges

157. None known.

Other Arrests

158. None.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

159. [redacted]

160. [redacted]

161. [redacted]

162. [redacted]

163. [redacted]

164. [redacted]

165. [redacted]

166. [redacted]

167. [redacted]

168. [redacted]

169. [redacted]

170. [redacted]

171. [redacted]

172. [redacted]

173. [redacted]

174. On March 16, 1980, Weinig married the former Alice Morey, an attorney, in Westminster, Vermont. From this marital union two sons, Jacob, age 13; and Samuel, age 9, were born.

175. Weinig informed that his son Samuel witnessed his father's arrest and as a result, suffered Post Traumatic Stress Syndrome, for which he is currently undergoing therapy on a bi-weekly basis. Samuel has also been prescribed anti-depressants by his therapist, whom he began seeing in the spring of 1995. The defendant stated that Samuel also suffers from palsy of the optic nerve which causes his right eye to shut without cause, a syndrome which developed when he was approximately one year old.

176. Weinig stated that Jacob enjoys good overall health, but is "very concerned" about his father and wants to know "about the case."

177. The defendant described his marital relationship as "excellent" and stated that he and his wife enjoy a mutually loving and supporting relationship.

178. Alice Weinig was interviewed as part of this investigation and was able to verify all of her husband's pertinent information.

179. Ms. Weinig described also described her marital relationship in favorable terms, indicating that she and her husband are "each other's best friend." The defendant's wife stated that [the instant offense] has "been a nightmare that won't go away;" however, she said that their family "is very strong and this has made them stronger." Mrs. Weinig also stated that she is "terrified of [Weinig] going to jail for a long time" and said that the children "will be devastated" because the defendant is "an integral part of [all of] their lives."

180. Mrs. Weinig described her husband as a "mediator" and said that he "doesn't come across too many people that he does not take care of." She also stated that Weinig is "someone who touches people" and is "thought well of by many others."

181. Mrs. Weinig stated that her husband "loved being a lawyer" and was never concerned with financial gain. She said that his only concern was that his family was "safe and secure, [but] not pampered." Mrs. Weinig indicated that it will "be difficult for her alone."

Physical Condition

182. Weinig stands 5'6" tall, weighs 175 pounds and has brown hair and eyes. [redacted]

183. [redacted]

184. [redacted]

185. [redacted]

186. [redacted]

187. [redacted]

188. [redacted]

189. [redacted]

190. [redacted]

191. [redacted]

192. [redacted]

Mental and Emotional Health

193. Weinig impressed as being of average intelligence and responded coherently and relevantly to all questions posed during the presentence interview.

194. According to a letter from Dr. Steven Roose, Weinig first consulted Dr. Roose (a psychiatrist), in March 1994. "He presented with a many year history of chronic depressive symptoms, including decreased self esteem, depressed mood, irritability and no ability to experience pleasure. The diagnosis was dysthymia, a form of chronic depression and treatment was initiated with [Prozac]. [Weinig] had a moderate response to medication which was continued over the next many months."

195. [redacted]

196. [redacted]

197. [redacted]

198. [redacted]

199. [redacted]

Substance Abuse

200. [redacted]

201. [redacted]

202. [redacted]

Educational and Vocational Skills

203. As verified by school records, Weinig received his Degree of Juris Doctor on June 2, 1974, from Hofstra University Law School. He previously received a Bachelor of Arts Degree in English, from Hobart College, on June 15, 1969. According to college records, Weinig graduated with honors.

Employment

204. From September 1974 until November 30, 1994, Weinig was an attorney practicing in New York State. Following his arrest, he reportedly resigned from the American Bar Association. At the time of the presentence interview, the defendant informed that he did not know if he would be dis-barred, but stated that he "needs a new career."

205. Between 1974 and approximately 1976, Weinig was employed with the Community Legal Assistance Corporation at Hofstra University, a legal service agency working with the indigent.

206. From 1976 until approximately 1978, the defendant was employed with the law firm of Rivkin, Leff & Sherman, located in Garden City, New York, doing commercial and civil litigation work.

207. Weinig informed that following his resignation from the above named law firm, he formed The Law Offices of Harvey Weinig, which he maintained for one year.

208. From approximately 1979, until "the end of 1988," the defendant worked with the law firm of Ressa, Nappi & Weinig, in Port Washington, New York.

209. Weinig informed that in 1989, he became of counsel to Berger Steingut & Stern; he subsequently became a partner of the firm in 1990. Weinig stated that law firm ultimately collapsed in May 1993.

210. From May 1993, until his arrest on November 30, 1994, Weinig was partners with Robert Hirsch in the law firm of Hirsch Weinig. According to the defendant, the firm was "dismantled by the Government" in March 1995. He also stated that all of the firm's assets were frozen on the date of his arrest.

211. Since the defendant's arrest, Weinig has been performing volunteer work as a "reader," for a blind sociology professor, at the Lighthouse; and doing legal research for the Legal Services for the Elderly and the Coalition For the Homeless.

Financial Condition: Ability to Pay

212. The following information was obtained by interviewing the defendant, reviewing his personal financial statement and reviewing a credit report generated by this office.

213. The credit report lists the following accounts and balances:

ACCOUNT NAME	CURRENT BALANCE
[redacted]	

214. [redacted]

215. [redacted]

216. [redacted]

217. [redacted]

218. [redacted]

219. [redacted]

220. [redacted]

221. [redacted]

[redacted]

222. [redacted]

223. [redacted]

224. [redacted]

225. [redacted]

226. [redacted]

227. [redacted]

228. [redacted]

229. [redacted]

230. [redacted]

231. [redacted]

232. [redacted]

233. [redacted]

234. [redacted]

235. It should be noted that the undersigned was contacted by Neil Berger, Esq., on behalf of Togut, Segal and Segal, the Successor Chapter 7 Bankruptcy Trustee of Berger, Steingut and Stern, whose case is pending before the United States Court for the Southern District of New York. In his letter dated January 4, 1996, Mr. Berger informed that it was Albert Togut's concern, as the trustee, "that funds and property seized [in the above criminal matters] actually constitute vested property of Berger Steingut's bankruptcy estate are not properly forfeitable, and may be forfeited to the United

States of America when Weinig is sentenced.

236. Mr. Berger advised in his submission that "there is a very strong likelihood that the accounts receivable seized by the Government, the proceeds thereof, account balances and cash include the Berger Steingut Accounts and the proceeds thereof, which are vested in the Berger Steingut bankruptcy estate, not the Government. Those assets do not in any way appear to constitute the proceeds of any criminal activity on the part of the defendants or property used to facilitate their criminal activities. As a result, those assets are not properly forfeitable property and should be turned over to the Successor Trustee."

237. Mr. Berger stated that the Successor Trustee "was not a party to the [September 20, 1995] plea agreement between [Mr.] Weinig and the Government...Notwithstanding, on [page 6] of the plea agreement it was 'agreed' that of the more than $1 million seized from the defendants [Weinig and Hirsch], $45,000 would be paid to Berger Steingut in settlement of its $250,000 claim in the State Court Action regarding the Berger Steingut Receivables. The Successor Trustee never agreed to that settlement..."

238. A complete copy of Mr. Berger's submission to the undersigned will be forwarded to the Court prior to sentencing.

239. It should be noted that following initial disclosure of this report, defense counsel disputed Mr. Berger's claims and has submitted his response as noted in the Addendum to Presentence Report, and has provided an Amended Answer and Counterclaims document which shall be forwarded to the Court.

PART D. SENTENCING OPTIONS

Custody

240. **Statutory Provisions -- Count One of S4 94 CR 981(KTD):** Up to twenty (20) years imprisonment (18 USC 1956(h)); **Count One of S2 95 CR 167(KTD):** Up to three (3) years imprisonment (18 USC 4).

241. **Guideline Provisions:** Based on a total offense level of 31 and a Criminal History Category of I, the guideline range of imprisonment is from 108 to 135 months.

242. If the applicable guideline range is in "Zone D" of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment (5C1.1(f)).

Impact of Plea Agreement

243. As the applicable guideline range was calculated based upon the entire criminal activity charged in the Indictment, no change in the guideline range has occurred as a result of the plea agreement.

Supervised Release

244. **Statutory Provisions -- Count One of S4 94 CR 981(KTD):** For a class C felony, a term of up to three years supervised release is authorized to follow any term of imprisonment (18 USC 3583(b)(2));
Count One of S2 95 CR 167: For a class E felony, a maximum term of one year supervised release is authorized to follow any term of imprisonment (18 USC 3583(b)(3)).

245. Multiple terms of supervised release shall run concurrently with one another (18 USC 3324(e)).

246. **Guideline Provisions -- Both Counts:** A term of supervised release to follow any period of custody of more than one year is mandatory (5D1.1(a));
Count One of S4 94 CR 981(KTD): For a class C felony, a term of supervised release of at least two, but not more than three years is authorized to follow any period of custody (5D1.2(a)(2);
Count One of S2 95 CR 167(KTD): For a class E felony, a term of supervised release of not more than one year is authorized to follow any term of imprisonment (5D1.2(a)(3)).

Probation

247. **Statutory Provisions -- Both Counts:** For felonies, a term of probation of not less than one, nor more than five years is authorized (18 USC 3561(b)(1)). Absent extraordinary circumstances, if probation is imposed, the court shall impose a special condition requiring a fine, restitution, or community service (18 USC 3563(a)(2)).

248. Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other (18 USC 3564(b)).

249. **Guideline Provisions:** Pursuant to §5B1.1, Application Note 2, where the applicable guideline range is in "Zone C or D" of the Sentencing Table, (i.e., the minimum term of imprisonment specified in the applicable guideline range is eight months or more), the guidelines do not authorize a sentence of probation.

Fines

250. **Statutory Provisions -- Count One of S4 94 CR 981(KTD):** A maximum fine of approximately $38 million (18 USC 1956(h)); **Count One of S2 95 CR 167(KTD):** A maximum fine of $250,000 is authorized (18 USC 3571(b)(3))

251. A special assessment of $50 on each count for a total of $100 is mandatory, pursuant to 18 U.S.C. 3013.

252. **Guideline Provisions:** The fine range for this offense is from $15,000 to $38 million (5E1.2(c)(4)(A)).

253. Subject to the defendant's ability to pay, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the Government of any imprisonment, probation, or supervised release, pursuant to U.S.S.G. 5E1.2(i). The most recent advisory from the Administrative Office of the U.S. Courts suggests that a monthly cost of $1,779.33 be used for imprisonment, a monthly cost of $195.30 for supervision, and a monthly cost of $1,183.08 for community confinement.

Restitution

254. **Statutory Provisions:** Not applicable.

255. **Guideline Provisions:** Not applicable.

Denial of Federal Benefits

256. **Statutory Provisions:** Not applicable.

257. **Guideline Provisions:** Not applicable.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

258. The Probation Office has no information available to indicate that a departure from the guidelines is warranted.

Respectfully submitted,

CHRIS J. STANTON
Chief U.S. Probation Officer

By: Jineen M. Forbes
JINEEN M. FORBES
U.S. Probation Officer
637-0040 ext. 5152

/jmf

Approved By: 3/19/96
CHRIS A. PALLADINO Date:
Supervisor

U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 20, 1995

BY FACSIMILE

John R. Wing, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

United States v. Weinig, et al.,
S4 94 Cr. 981 (KTD)

United States v. Weinig,
S2 95 Cr. 167 (KTD)

Dear Mr. Wing:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Harvey Weinig ("the defendant") to: (i) Count One of Indictment S4 94 Cr. 981 (KTD) charging the defendant with participating in a money laundering conspiracy in violation of Title 18, United States Code, Section 1956(h); (ii) Count Thirty-eight of Indictment S4 94 Cr. 981 (KTD) charging that certain assets and properties owned by the defendant were used to facilitate, or constitute the proceeds of (including under a theory of substitute assets), the money laundering offense described in Count One of Indictment S4 94 Cr. 981 (KTD), pursuant to Title 18, United States Code, Sections 982(a)(1) and 982(b)(2), and Title 21, United States Code, Section 853(p); and (iii) Count One of Information S2 95 Cr. 167 (KTD) charging the defendant with having knowledge of the actual commission of a felony cognizable by a Court of the United States, and concealing and not making the felony known as soon as possible to some judge or other person in civil or military authority under the United States in violation of Title 18, United States Code, Section 4.

Count One of Indictment S4 94 Cr. 981 (KTD) carries a maximum sentence of 20 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine of not more than $500,000

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or twice the value of the property involved in the offense, whichever is greater, and a mandatory $50 special assessment. With respect to Count Thirty-eight of Indictment S4 94 Cr. 981 (KTD), it is understood that the applicable forfeiture provisions are Title 18, United States Code, Sections 982(a)(1) and 982(b)(2), and Title 21, United States Code, Section 853(p), because the defendant obtained in excess of $800,000 constituting the illegal proceeds of his participation in the money laundering conspiracy described in Count One of Indictment S4 94 Cr. 981 (KTD), and, in the course of that conspiracy, conducted three or more separate money laundering transactions within a one year period involving in excess of $100,000. Because the amount of money laundered by the conspiracy, of which the defendant was a member, was approximately $19 million, pursuant to Title 18, United States Code, Sections 982(a)(1) and 982(b)(2), and Title 21, United States Code, Section 853(p), the maximum amount that the defendant could be required to forfeit to the United States is approximately $19 million. Count One of Information S2 95 Cr. 167 (KTD) carries a maximum sentence of 3 years' imprisonment, a maximum term of 1 year's supervised release, a maximum fine of $250,000, and a mandatory $50 special assessment. Together, Counts One and Thirty-eight of Indictment S4 94 Cr. 981 (KTD) and Count One of Information S2 95 Cr. 167 (KTD) carry a maximum sentence of 23 years' imprisonment.

In consideration of the defendant's plea to the above offenses, this Office, at the time of sentencing, will move to dismiss the remaining twenty-one counts against the defendant in Indictment S4 94 Cr. 981 (KTD), and to dismiss Indictment S1 95 Cr. 167 (KTD) in its entirety.

In consideration of the foregoing and pursuant to Sentencing Guidelines § 6B1.4 (as in effect in November 1994), the parties hereby stipulate to the following:

A. Offense Level.

1. The Money Laundering Conspiracy: Count One of S4 94 Cr. 981 (KTD).

a. Count One of Indictment S4 94 Cr. 981 (KTD) charges a conspiracy to launder money in violation of Title 18, United States Code, Section 1956(h). Because two of the objects of the conspiracy are violations of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 1956(a)(2)(B)(i), Sentencing Guidelines § 2S1.1(a)(2) is applicable, resulting in a base offense level of 20.

b. The defendant knew or believed, or acted with

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a conscious purpose to avoid learning the truth, that the funds were the proceeds of unlawful activity involving the manufacture, importation, and distribution of narcotics, resulting in a specific offense characteristic increase of 3 levels pursuant to Sentencing Guidelines § 2S1.1(b)(1).

c. The value of the funds laundered by the defendant and his co-conspirators was approximately $19 million, resulting in a specific offense characteristic increase of 9 levels pursuant to Sentencing Guidelines § 2S1.1(b)(2)(K).

d. As an attorney licensed to practice law in the State of New York, the defendant abused a position of trust and/or used a special skill in the commission of the offense, resulting an enhancement of 2 levels pursuant to Sentencing Guidelines § 3B1.3.

e. Accordingly, the applicable Sentencing Guidelines offense level for Count One of Indictment S4 94 Cr. 981 (KTD) is 34.[1]

2. The Misprision of Felony Information: Count One of S2 95 Cr. 167 (KTD).

a. Sentencing Guidelines § 2X4.1 is applicable to the offense charged in Count One of Information S2 95 Cr. 167

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[1] Under the United States Sentencing Commission's proposed amendments to the Sentencing Guidelines, the defendant's base offense level would be 12 pursuant to Guidelines § 2S1.1(a)(2); there would be a specific offense characteristic increase of 17 levels based on the amount of money laundered, to wit, approximately $19 million, pursuant to Guidelines §§ 2S1.1(a)(2) and the § 2F1.1 loss table; there would be a further offense characteristic increase of 2 levels pursuant to § 2S1.1(b)(1)(A) because the transactions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct; there would be a further offense characteristic increase of 2 levels pursuant to § 2S1.1(b)(1)(B)(A) and (B) because the offense involved the movement of funds through a company or financial institution outside the United States, and otherwise involved a sophisticated form of money laundering; there would be an increase of 2 levels pursuant to § 3B1.3 for an abuse of a position of trust and special skill; and, there would be a 3-level reduction for acceptance of responsibility pursuant to Guidelines § 3E1.1. Accordingly, under the proposed amendments, the applicable Sentencing Guidelines offense level for Count One of Indictment S4 94 Cr. 981 (KTD) would be 32.

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(KTD), which provides for a base offense level of 9 levels lower than the offense level for the underlying offense.

b. The underlying offense is obstructing, delaying and affecting commerce by participating in a scheme to extort money and property in violation of Title 18, United States Code, Section 1951, to which Sentencing Guidelines § 2B3.2 is applicable. The base offense level under Sentencing Guidelines § 2B3.2 is 18. The amount of money the participants in the scheme attempted to extort was approximately $237,000, resulting in a specific offense characteristic increase of 2 levels pursuant to Sentencing Guidelines §§ 2B3.2(b)(2) and 2B3.1(b)(6)(C). A person was abducted to facilitate commission of the offense, resulting in a specific offense characteristic increase of 4 levels pursuant to Sentencing Guidelines § 2B3.2(b)(5)(A). Accordingly, the base offense level for the underlying offense of extortion is 24.

c. Sentencing Guidelines § 2X4.1 requires subtracting 9 levels from the base offense level for the underlying offense, resulting in an offense level of 15.

d. Accordingly, the applicable Sentencing Guidelines offense level for Count One of Information S2 95 Cr. 167 (KTD) is 15.

3. Multiple Count Analysis.

a. The extortion charged as the underlying offense in Count One of Information S2 95 Cr. 167 (KTD), to which Sentencing Guidelines § 2B3.2 is applicable, is excluded from being grouped with other offenses pursuant to Sentencing Guidelines § 3D1.2. Accordingly, the offense charged in Count One of Information S2 95 Cr. 167 (KTD) should not be grouped.

b. Because, as set forth above, the sentencing Guidelines offense level applicable to Count One of Indictment S4 94 Cr. 981 (KTD), to wit, level 34, is 9 or more levels higher than the offense level applicable to Count One of Information S2 95 Cr. 167 (KTD), to wit, level 15, the combined offense level for both Indictment 94 Cr. 981 (KTD) and Information S2 95 Cr. 167 (KTD) is the offense level of 34 applicable to Count One of Indictment S4 94 Cr. 981 (KTD), pursuant to Guidelines § 3D1.4.

c. By timely pleading guilty on or before Thursday, September 21, 1995, and allocuting to the satisfaction of the District Court, the defendant will demonstrate a recognition and an affirmation of personal responsibility for his criminal conduct, will permit the Government to avoid additional preparation for

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trial and will permit the Court to allocate its resources efficiently, thus warranting a decrease of 3 levels pursuant to Sentencing Guidelines § 3E1.1.

d. Accordingly, the applicable Sentencing Guidelines offense level for both Count One of Indictment S4 94 Cr. 981 (KTD) and Count One of Information S2 94 Cr. 167 (KTD) is 31.

B. Criminal History Category.

Based upon the information now available to this Office (including representations by the defense), the defendant has no prior criminal convictions. Accordingly, the defendant's Criminal History Category is I.

C. Sentencing Range.

The sentencing range for an offense level of 31 with a criminal history category of I is 108-to-135 months.

D. Forfeiture.

It is further understood that pursuant to Title 18, United States Code, Section 982, the defendant agrees to forfeit to the United States all right, title and interest that he has in the following assets and/or properties (which constitute both the proceeds of, and a portion of the aggregate value of the monies handled by the conspirators in the course of, the money laundering offense described in Count One of Indictment S4 94 Cr. 981 (KTD)): (i) the real property and building known as 48 Maidstone Lane, Amagansett, New York; (ii) approximately $695,827 in United States currency provided by Robert Hirsch to the Government on or about September 22, 1994; (iii) approximately $248,920 in United States currency provided by Robert Hirsch to the Government on or about October 4, 1994; (iv) the contents of the account in the [redacted] (vi) the assets of Hirsch Weinig, formerly located at 1540 Broadway, Suite 29A, New York, New York ("Hirsch Weinig"), including but not limited to cash, checking accounts, savings accounts, trust and escrow accounts, any leasehold interest in Hirsch Weinig, fixtures, books, equipment and accounts receivable; and (vii) the contents of the account [redacted] it is understood, however, that prior to

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conveying his interest in the aforementioned assets and/or properties to the United States, the defendant shall use the proceeds and/or contents of those assets and/or properties to pay, through Bart M. Schwartz, Esq., the monitor of Hirsch Weinig, current Hirsch Weinig liabilities in the sum of approximately $10,000 in trade accounts payable, approximately $25,000 to David Robinson, Esq., for his representation of Hirsch Weinig in the matter captioned Berger Steingut & Stern v. Hirsch Weinig, et al., No. 120945/93, and approximately $45,000 to Berger Steingut & Stern, in settlement of the matter captioned Berger Steingut & Stern v. Hirsch Weinig, et al., No. 120945/93. The defendant agrees to take all necessary action to place these assets in the possession, custody and control of the United States.

The parties agree that neither a downward nor an upward departure from the Guidelines range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court sua sponte consider such a departure or adjustment.

Nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Guidelines range set forth above (or such other range as the Court may determine) the defendant should be sentenced; (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, the parties reserve the right to answer any inquiries and to make all

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appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is further agreed (i) that the defendant will neither appeal, nor otherwise litigate under Title 28, United States Code, Section 2255, any sentence within or below the stipulated Guidelines range and (ii) that the Government will not appeal any sentence within or above the stipulated Guidelines range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

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There are no promises, agreements or understandings between this Office and the defendant other than as set forth herein.

Very truly yours,

MARY JO WHITE
United States Attorney

By: _____
MARK P. GOODMAN
Assistant United States Attorney
[redacted]

APPROVED:

_____
SHIRAH NEIMAN
Deputy United States Attorney

AGREED AND CONSENTED TO:

_____ 9/19/95
HARVEY WEINIG DATE

APPROVED:

_____ 9/19/95
JOHN R. WING, Esq. DATE
Attorney for HARVEY WEINIG

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REPORT TO THE PRESIDENT

ON PROPOSED DENIAL OF EXECUTIVE CLEMENCY FOR

HARVEY WEINIG

Offense:	Conspiracy to commit money laundering; misprision of felony.
Sentence:	135 months' imprisonment; three years' supervised release; criminal forfeiture.
Date:	March 22, 1996.
District:	Southern New York.
Relief sought:	Commutation of sentence.

Summary of essential facts:

In May 1993, petitioner, a New York attorney who specialized in commercial litigation, established the law partnership of Hirsch Weinig in Manhattan with attorney Robert Hirsch. The two men had been partners in another law firm that dissolved due to financial difficulties, and both continued to represent certain clients with whom they had previously established professional relationships. One of the clients Hirsch continued to assist was Tohmes Peter, a resident of Germany who was part of an international network (eventually numbering approximately 30 people, including petitioner and Hirsch) that had been engaged for about two years in laundering millions of dollars annually for Colombian drug traffickers reportedly involved with the Cali cartel.[1]

In October 1993, Hirsch requested petitioner's help in retrieving for Peter $267,830 in cash that had been seized in Puerto Rico by Drug Enforcement Administration (DEA) agents from one of Peter's couriers, and a suitcase containing another $260,000 that the courier had stored at the Sands Hotel there. Petitioner recruited one of his clients, a "street smart" former fireman turned small businessman named Richard Spence, to travel to Puerto Rico to reclaim the suitcase of cash from hotel security personnel. Spence accepted the assignment and went to Puerto Rico but was unsuccessful in obtaining the valise of cash from the hotel. During the next several weeks, petitioner and Hirsch filed a civil action in the Eastern District of New York against the Sands Hotel on behalf of the courier alleging that the hotel had mishandled the suitcase, and Hirsch traveled to Germany to confer with Peter about the courier operation. Upon his return, Hirsch, petitioner, and Spence developed a plan under which Spence agreed to

EXHIBIT 3

[1]By the conclusion of their investigation, federal authorities amassed evidence indicating that the ring laundered approximately $50 million between 1991 and late 1994.

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supervise the courier operation,[2] take custody of the cash that the couriers transported through the United States and Canada for the Colombian drug traffickers, and deposit the funds in bank accounts controlled by him or the firm of Hirsch Weinig. Spence, Hirsch, or petitioner would then wire the funds to foreign bank accounts, primarily in Switzerland, that were controlled by other members of the conspiracy, who in turn would transfer the funds to bank accounts designated by the Colombians. The three men further agreed that they would divide the profits derived from Spence's work equally among them, with each receiving one-third of the commission paid on each transaction.[3]

In early 1994, as petitioner and his associates deepened their involvement with the money laundering operation, the DEA, FBI, and New York City Police Department began a joint investigation of the ring, utilizing physical surveillance, court-authorized wiretaps of telephone lines, and undercover operations, among other methods, to gather evidence. Early in the year, petitioner and Hirsch directed one of their law firm's associates to incorporate Transglobal Import Export Trading Company, Inc. on Spence's behalf so that he could open a corporate bank account through which to process the cash delivered by the couriers. Thereafter, petitioner and Hirsch decided to begin using the Hirsch Weinig attorney trust account for laundering purposes as well. Hirsch and several of the European members of the conspiracy met twice in Switzerland during the first half of the year to discuss the ring's business, and Spence, Hirsch, and, less frequently, petitioner, routinely wired to foreign banks the money the couriers delivered to Spence. In all, Spence, Hirsch, and petitioner laundered approximately $19 million for the Colombian drug dealers between 1993 and 1994.[4] Moreover, after DEA agents made seizures totaling more than $2.5 million from three of the ring's couriers in Houston, Texas in January 1994,[5] Hirsch and petitioner filed a series of fraudulent claims of ownership with DEA on behalf of Spence seeking return of these funds, as well as the money confiscated in the October 1993 seizure in Puerto Rico. In each instance, Spence swore that the funds were his and represented business trip expense money or the proceeds of overseas sales of precious stones and metals.

In April 1994, Spence, Hirsch, and petitioner decided to augment their commissions by stealing and splitting some $2.4 million of the drug-trafficking proceeds they were supposed to

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[2]Among the couriers Spence supervised for the ring were a New York City police officer, a New York City fireman, two purported rabbis, and a hospital administrator. This last courier, Gary Salerno, also acted as an enforcer for Spence.

[3]Approximately one year later, in a tape-recorded conversation with Hirsch in November 1994, petitioner recalled that "we schlepped forward because [Spence] was the only game in town. He was the only person we knew who could . . . get money to a bank. And we had no alternatives . . . . We talked about it but we had none, so we used Dick. We understand what it was." He further opined, however, that "[Spence] cut a bad deal for himself. . . . When it started, a third, a third, a third was not the right deal. . . . He was taking the phone calls, he was picking up the money, he was sending the money out. He was doing everything. . . . Basically, what we were was a funder. That changed, but initially, a third, a third, a third, was not the right deal. . . ."

[4]Petitioner received approximately $1 million from the operation, and stored some of this money in the Manhattan apartment he shared with his wife and two young sons and in the family's summer home on Long Island.

[5]In all, law enforcement authorities seized nearly $5 million from the ring's couriers during their investigation of the money laundering conspiracy.

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launder.[6] To cover up the theft from the Colombian drug traffickers, Hirsch created a bogus indictment and a fraudulent seizure order naming Spence as a criminal defendant from whom the money had been seized by the DEA. When the drug traffickers discovered later that year that shortages existed in the laundered funds,[7] they began to put pressure on various members of the money laundering ring. In August and September 1994, Hirsch received several complaining and threatening telephone calls from his Colombian contacts; in September, DEA agents learned that one of the Colombians had threatened to kidnap and kill Hirsch or a member of his family. Law enforcement officials thereupon contacted Hirsch, who immediately agreed to cooperate with the government in its investigation. Thereafter, between September and November 1994, he recorded his conversations with his co-conspirators, including petitioner.

After conferring about the shortage, Hirsch, petitioner, and Spence decided it would be best to repay the Colombians. On September 20, 1994, petitioner gave Hirsch $200,000, which Hirsch deposited in Spence's bank account so that it could be wired to the Colombians. Two days later, petitioner told Hirsch that their principal Colombian contact had called their law office and left his telephone numbers for Hirsch. Hirsch and petitioner further discussed the problems presented by their outstanding debt, and petitioner assured him that if necessary, they could pay down the debt using money from accounts the two men had in Switzerland[8] or from the firm's escrow accounts. At the end of the month, petitioner and Hirsch had further discussions about their payment problem, and on October 4, 1994, petitioner gave Hirsch another $250,000.

While the conspirators were attempting to resolve their indebtedness to the Colombians, Spence sought to obtain repayment of a bad debt of his own. He had previously purchased part interest in a mortgage company from James Clooney for $237,000 and had come to believe that he had been swindled. When Clooney did not repay him, Spence had Gary Salerno, see note 2, *supra*, and two other men kidnap Clooney on Saturday night, November 12, 1994, to force him and his family to raise the money. The kidnappers held Clooney in a series of hotel rooms in the New York metropolitan area until Wednesday morning, November 16th. In the interim, Clooney's parents and girlfriend had been negotiating with Spence's representative, Richard

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[6]In a recorded conversation with Hirsch in October 1994, petitioner explained his rationale for their theft of the drug traffickers' money:

> And all of a sudden, someone says to me, I can put a million in cash in your . . . attic. I do a quick analysis, and understand that if everything else goes wrong in the world for the rest of my life, a million in cash takes care of everything I'll ever need. . . . And so I said, I'm dealing with people, and I remember this was . . . my approach. We're dealing with people who are total assholes, who are out of control, who are scumbag, lying, cheats. And I am gonna be in this for the long haul? Fuck 'em! Fuck 'em! I'm taking a million dollars and let's . . . see you get it from me. That was my approach. . . . This is not, this is dealing with normal Americans (*sic*). This is dealing with guys I wouldn't take a telephone call from.

[7]Petitioner and his immediate associates apparently were not the only members of the laundering operation who took the opportunity to skim money. In a conversation with Hirsch in September 1994, Tohmes Peter estimated that the ring owed the Colombians approximately $9 million "plus penalties and interest."

[8]The government's investigation revealed that petitioner and Hirsch maintained two numbered accounts at Bank Leumi in Switzerland, whose aggregate balance at the time of this conversation was about $320,000.

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Messina, and the parties ultimately agreed that Clooney and his girlfriend would sign over various property to Spence in a meeting at the Hirsch Weinig law firm that afternoon.

Although petitioner was not initially aware of the kidnapping, he had learned of it from Spence by November 15th, on which date he told Hirsch about the crime in a recorded telephone conversation. Explaining that Spence had "seized a person" and describing Clooney as being held "in protective custody," he told Hirsch that Clooney would "be released as soon as his family produces money . . . ." Hirsch worried that Clooney would contact the authorities, but petitioner commented, "Well, he's not in a position to call the [p]olice at this point (UI), right?"[9]

In a second conversation with Hirsch recorded on November 16th, petitioner related that he had learned from Spence that the kidnapping was "falling apart" because Clooney's relatives had "[a]pparently" notified law enforcement authorities. To Hirsch's expression of concern that the kidnappers would be arrested, petitioner replied, "I don't really care. I, I mean, what do you care really?" He further described to Hirsch what Spence had asked him to do and how he had responded: "'Here's the thing, what I want you to do is pursue all legal means of securing my debt from [the Victim],' and I said 'fine.' And that's what we're doing, you know, we're filing the deed, we'll file the letters of claim. He owes Dicky $200,000, we're lawyers." When Hirsch emphasized that he did not want to be involved in a kidnapping, petitioner replied,

> We're not involved. We're not involved in a kidnapping. We don't know anything about a kidnapping. All we know, remember the last thing that happened is that Messina called me and said, "call the girlfriend of [the Victim], she has some Peter Max paintings (UI)," and I said, that's Good, and I, and I had [The First Associate] call her and (UI), but basically I agree one hundred percent, we don't want to be involved in a kidnapping.

As the conversation about the kidnapping continued, petitioner insisted repeatedly that "we didn't do it," and stated, "I don't know anything about it. That's my position. I don't know anything about it." He acknowledged: "If he tells me a crime is going to be committed, then I have an obligation, I have to disclose it or go to the authorities." However, petitioner asserted: "But he didn't do that. He just talked to me a few times about, 'I couldn't just sit around and wait, so I had some goons go talk to the guy and they're gonna make sure that the money comes this week.'" When Hirsch inquired whether he was "going to proceed" with what petitioner termed "the civil" matter involving Clooney, petitioner opined, "Whether or not (UI) was arrested, he still has an indebtedness of $237,000, right? . . . I mean, it doesn't take away from the fact that he gave someone $237,000, and they didn't pay him."

On the same day, petitioner instructed two junior attorneys in his firm to meet with Clooney and prepare the documents by which Clooney could assign Spence security interests in his house and certain artwork. In the late afternoon of November 16th, Clooney and his girlfriend brought several paintings and the deed to Clooney's house to the law firm. There, they met with

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[9]The recorded conversations were transcribed by the government in preparation for trial. Quotations from the conversations that appear in this report are taken from these transcripts. The designation "UI" in a quotation stands for "unintelligible."

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the assigned lawyers, Clooney paid $7,900 to Spence's associate, Richard Messina, and he and his girlfriend executed documents to assign security interests in the property to Spence's wife.

On November 29, 1994, law enforcement agents obtained arrest warrants for petitioner, Spence, and their co-conspirators, including several foreign nationals, and search warrants for a number of locations, including the Hirsch Weinig law office and petitioner's apartment and summer home. See note 4, *supra*. Petitioner was arrested the following day and released on bail.[10] Like Hirsch, Spence began cooperating with the government immediately upon his arrest, but petitioner declined repeated requests from prosecutors for assistance. He ultimately was indicted with multiple co-defendants in the United States District Court for the Southern District of New York and charged with conspiring to launder narcotics proceeds, 15 counts of money laundering, two counts of interstate transportation of stolen money, wire fraud, three counts of making false statements, and criminal forfeiture.[11] He was also charged in a separate indictment with interference with commerce by extortion based upon his involvement in the Clooney kidnapping and ransom plot.

Petitioner announced his intention to proceed to trial, but on September 20, 1995, shortly before trial was due to begin and well after his primary co-conspirators, including Hirsch and Spence, had pled guilty, he negotiated a plea bargain with the government. He agreed to plead guilty to the indicted charge of conspiring to launder monetary instruments and to an information charging him with misprision of felony for failing to promptly report the extortion scheme that targeted James Clooney. He further agreed to forfeit his interest in certain property in satisfaction of the forfeiture count of the money laundering indictment.[12] In return, the government agreed to dismiss all other charges against him. The parties further stipulated that the value of the funds laundered by petitioner and his confederates was $19 million, that petitioner's applicable sentencing range was 108-135 months,[13] that neither an upward nor a downward

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[10]The ensuing prosecution of the money laundering ring received media coverage in a number of national newspapers.

[11]The initial indictment returned against the ring in December 1994 charged one count of conspiracy to commit money laundering and one count of criminal forfeiture. After further investigation, additional substantive counts were added by the return in April 1995 of a superseding indictment.

[12]The property included his summer home, the contents of various Swiss and United States bank accounts, the assets of his law firm, and some $940,000 in cash that Hirsch had turned over to the government.

[13]The sentencing range was calculated in the following manner. Because the two offenses to which petitioner pled guilty were not related for purposes of the guidelines, they could not be grouped together. According to the guideline for money laundering, U.S.S.G. § 2S1.1, petitioner's base offense level for that offense was 20. This offense level was adjusted upward by a total of 14 levels due to the value of the funds laundered, the fact that petitioner knew or acted with conscious disregard to avoid learning that the funds were the proceeds of narcotics trafficking, and petitioner's use of his special skills as an attorney in committing the offense. Pursuant to the guideline for misprision of felony, U.S.S.G. 2X4.1, petitioner's offense level for that crime was 15 (the level was determined by reference to the guideline for the underlying felony of extortion and upward adjustments based upon the value of the property that was extorted and the abduction of the victim). Under U.S.S.G. § 3D1.4(c), which determines combined offense levels, petitioner's offense level of 34 for money laundering was not increased by virtue of the misprision offense, but the misprision did "provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level." Finally, the parties agreed that petitioner should receive a three-level downward adjustment for accepting responsibility, resulting in a final offense level of 31. Since he had no other criminal record, petitioner's sentencing range was 108-135 months.

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departure from that range was warranted, and that neither party would seek a departure. The agreement did not include any reference to cooperation by petitioner with the government, or any statement suggesting that the government would consider filing a motion for downward departure on petitioner's behalf based upon substantial assistance by him.

On September 21, 1995, petitioner entered his guilty plea to the money laundering conspiracy and misprision charges. After an extended colloquy with the court establishing the knowing and voluntary nature of the plea and his understanding of the specifics of the bargain, he gave a detailed statement outlining his involvement in both the money laundering operation and the extortion scheme. Petitioner represented that he originally believed representations made by Hirsch that Tohmes Peter was an entrepreneur engaged in the "worldwide distribution of parallel market or greige market goods, including electronic equipment, computer equipment, health and beauty aids, and other commodities." However, he conceded that "[f]rom the very start, . . . [he] had misgivings about the highly unconventional nature of the activity in which [Peter] was engaged," and that "[a]s time went on, [he] deliberately ignored obvious indications that these monies were, in fact, the proceeds of illicit drug transactions, and eventually [he] was fully aware of this fact."[14] Petitioner further admitted:

> Notwithstanding my knowledge, belief and conscious avoidance of the obvious, I participated to the extent that I was asked in the facilitation of wire transfers of these funds. I eagerly and greedily shared in the proceeds of the transactions which were allocated as commissions, including a substantial portion of money that was withheld from the client.

Regarding the misprision of felony offense, petitioner admitted that although he had been out of the country from November 9-13, 1994, he learned "[w]ithin the first few days after [his return] to New York . . . that Spence had sent several individuals to seize Mr. Clooney in an effort to compel him to return the money that he had wrongfully taken." Petitioner further acknowledged that on November 16, 1994, he "was advised that Clooney would be coming into [petitioner's] office that afternoon to transfer the artwork and real estate . . . to secure Spence's investment," that he "instructed two of the lawyers in [his] office to prepare the necessary documentation and meet with Mr. Clooney when he arrived at the office," and that the lawyers reported to him what had occurred after the meeting was over. Petitioner also admitted that he did not report the kidnapping and extortion to any law enforcement authority or any court even though he was a practicing attorney at the time and had not been forced by anyone to take these actions.

Between his guilty plea and sentencing, petitioner apparently offered to cooperate with the government, took part in November 1995 in a debriefing session concerning the money laundering operation, and advised prosecutors that Hirsch had violated his own cooperation agreement with prosecutors and had made plans in early 1995 to flee the United States. The

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[14]Among the indicia of illegality of which petitioner admitted he was aware were the following: "The DEA . . . was saying that the money was drug related"; the "highly unconventional manner in which the money was received, often small denominations of cash in plastic bags"; the "highly unconventional locations, . . . [h]otel rooms, street corners and empty cars in parking lots where the money was transferred"; the "fact that [his] office never saw documents that would ordinarily underlie a commercial transaction"; and "the fact that [he] was receiving what [he] perceived to be an unreasonably large amount of money in relation to the business being conducted."

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government, however, had already learned of Hirsch's violations of the cooperation agreement and had moved to revoke his bail in May 1995,[15] well before petitioner's guilty plea. Prior to his scheduled sentencing date, some 52 friends and professional associates of petitioner and his wife, including former state prosecutors, a law professor, and an associate dean of the City University of New York Law School, wrote to the sentencing judge to urge leniency for petitioner, citing his overall good character, his history of kindness to others and generosity in providing money and free legal assistance to persons in need, and his closeness to his family.

On March 22, 1996, petitioner was sentenced to a term of imprisonment of 135 months, at the top of the sentencing range that he had stipulated applied to his conduct.[16] In imposing this sentence, the district judge addressed petitioner and his counsel as follows:

> What you are facing is something that you were conscious or you got yourself into. . . . [Y]ou look on a person to be sentenced, not only as a human being, but as to what he has done to society. The suggestion has been made that you are a very altruistic person, that you are a great guy and maybe you are two people. I don't know.
>
> Let's start with looking from society's viewpoint at the kidnapping. What would you have done, Mr. Weinig, if your son . . . had been kidnapped and some lawyer knew about it, and knew he could get him out of there, and didn't do anything? You didn't think about that, did you?
>
> I insisted on getting the tape and listening to your conversation with Hirsch when you talk about it, very flip, matter of fact. You couldn't care less, but if it had been your son, you would have cared more.
>
> * * * * *
>
> You apparently were able to divide yourself in two, outside the office and inside. Even when Clooney came in, your attorney says you let it happen. Sure you let it happen, because you went, and you stuck two young associates with the job of cleaning it up.

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[15]Hirsch apparently continued to engage in money laundering in 1995 while cooperating with the government. Besides pleading guilty to money laundering, bank fraud, and false statements and forfeiting property in connection with the 1993-94 conspiracy in which petitioner was involved, Hirsch also pled guilty to a second, unrelated charge of money laundering based upon his criminal conduct in 1995. He was sentenced to concurrent prison terms of three years in each case, based upon the government's request for a downward departure due to his substantial assistance. According to the United States Attorney, "[t]he predominant reason the Government re-signed Hirsch as a cooperator was to assist in prosecuting [petitioner's] trial. If [petitioner] had admitted his guilt earlier, Hirsch would not have been re-signed as a cooperating witness."

[16]Through what was apparently a clerical error, the judgment of conviction lists only the money laundering conspiracy and forfeiture charges and omits the misprision of felony charge to which petitioner also pled guilty.

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* * * * *

> What are we talking about? . . . Nineteen million dollars in drugs is a lot of money. That much drugs is a lot of pain. If [your sons] were the ones who were using the drugs, you would be singing a different story, an entirely different song.
>
> Now you ask, [defense counsel], for as much mercy as I can give. You and your client should feel glad that this is a guidelines case and not something more. Not in the old days. Because if it had been in the old days, I would have given him the statutory maximum.[17]

Based upon his conviction, petitioner submitted his resignation to the New York bar. In accepting his resignation, the Appellate Division of the State of New York wrote:

> Our review of the record in this matter reveals that respondent engaged in a course of conduct that can only be described as shocking and reprehensible for anyone, let along a member of the bar. Were it not for respondent's application . . . to resign from the bar on the basis that he is the subject of an investigation or disciplinary proceeding for misconduct against which he cannot successfully defend himself, a "serious crimes" hearing would have been held. We have reviewed the respondent's affidavit submitted in support of his application to resign and find that it complies with the Court's rules. It should be emphasized that, based on the extant record, were this respondent to have proceeded to a "serious crimes" hearing, the only appropriate sanction would have been disbarment.

In re Weinig, 642 N.Y.S.2d 654, 656 (N.Y. App. Div. 1996).

Grounds for clemency:

Now 52 years old and having no other criminal record, petitioner has served 54 months of his prison sentence as of October 2000.[18] He is currently projected for release in February 2006.

Born in Brooklyn, New York, in March 1948, petitioner received his Bachelor of Arts degree in English with honors from Hobart College in June 1969. He married his first wife that same year, but the couple separated in 1971 and divorced in 1975. Petitioner received his Juris

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[17]The money laundering charge carried a statutory maximum of 20 years' imprisonment, while the misprision of felony charge carried a three-year maximum sentence.

[18]Petitioner voluntarily surrendered at the Federal Correctional Institution at Fort Dix, New Jersey, on April 19, 1996, to begin serving his sentence and remains incarcerated at that facility.

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Doctor degree from Hofstra University in June 1974 and was admitted to the New York bar in May 1975. Between law school and 1976, he was employed by the Community Legal Assistance Corporation at Hofstra University providing legal assistance to the indigent. Between 1976 and the time of his arrest, he was engaged in the private practice of law. During the pendency of his prosecution, he performed legal research on a volunteer basis for Legal Services for the Elderly in Manhattan. In 1980, he married his current wife, who is also an attorney. They have two sons, who are now 17 and 13. By all accounts, petitioner's family is very close-knit and he has been deeply involved in the rearing of his children. According to the presentence report, petitioner was diagnosed with dysthymia, a form of chronic depression, in March 1994, at which time he began a course of drug therapy. In December 1995, following the discovery of a cancerous tumor, petitioner underwent successful surgery to remove his thyroid gland, which was itself determined not to be cancerous. The Bureau of Prisons reports that he currently is "assigned to regular duty status, with no medical restrictions" and that he "has not participated in any counseling groups . . . [but] has utilized the services of the Unit Correctional Counselor when needed." He has maintained clear conduct, is presently assigned to the Wellness Program work detail, and has previously been assigned to the tutor work detail.

Petitioner seeks commutation of his 135-month term to 60 months (five years) based upon the following claims: (1) that his sentence is "unconscionably disproportionate to the sentences given to his more culpable co-defendants" as well as to money laundering sentences imposed nationwide; (2) that he has made and will continue to make positive contributions to society and does not require additional punishment or rehabilitation; and (3) that his family, particularly his younger son, needs him at home.

Petitioner supports his assertion of sentencing disparity by pointing to the following sentences imposed upon his "more culpable co-defendants": Robert Hirsch – three years' imprisonment; Richard Spence – three years' imprisonment; Tohmes Peter – 97 months' imprisonment; Gary Salerno – concurrent terms of 108 months' imprisonment, imposed in two separate cases which charged Salerno with conspiring to launder monetary instruments and interfering with commerce by threats of violence;[19] Leon and Rachel Weinmann (the Swiss couple who received the money wired by Hirsch, Spence, and petitioner) – one year of unsupervised probation and a $1,000 fine;[20] and various couriers and assistants for the ring who "were sentenced to terms ranging from probation to a prison term of two years and three months." Characterizing himself as "a belated and minor participant in the conspiracy," petitioner asserts that it is "unconscionable" that he "should serve a term of more than 11 years,"

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[19]Both of these sentences were also ordered to run concurrently with a sentence of 25 years' imprisonment, five years' supervised release, and $66,672.15 in restitution imposed in an unrelated case by the federal court in the Eastern District of New York in October 1997 for charges of racketeering and collection of credit by extortionate means.

[20]According to petitioner's presentence report, the Weinmanns pled guilty to a violation of United States monetary transaction reporting requirements while facing pending money laundering charges in Switzerland. After their United States sentencings, the Weinmanns were escorted to a flight to Switzerland and their departure to that country was verified. The United States Attorney's Office agreed to these dispositions at the request of the Swiss government in order to facilitate the Weinmanns' prosecution in what was reported to be the second largest money laundering case in Swiss history.

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while Hirsch, "the leader of the money laundering scheme," and Spence, "a major participant in the scheme who had a prior criminal record[21] and who directed the related kidnapping," were each sentenced to three years' imprisonment because of their cooperation with the government.

He likewise claims that the government "[f]or no apparent reason . . . declined to follow up on" his offer to cooperate and "subsequently denied [him] a 5K1.1 letter which would acknowledge his cooperation."[22] Further, representing that he "learned of Mr. Clooney's detention only after Mr. Clooney had been released" (emphasis in original; footnote omitted), petitioner asserts that he "had an ethical obligation not to disclose confidential knowledge of his client's prior criminal acts," and argues that "[t]he sentencing judge, without justification – and apparently ignoring [petitioner's] ethical obligations to preserve client confidences relating to the prior kidnapping – imposed the maximum sentence permitted by the guidelines." Finally, petitioner also contends that his sentence is "grossly unfair because he has been punished far more severely than convicted money launderers in other cases." In support of this claim, he relies on statistics from the United States Sentencing Commission's 1998 Sourcebook of Federal Sentencing Statistics, reflecting that the median sentence for money laundering convictions in Fiscal Year 1998 was 24 months' imprisonment. He also contends that the "Sentencing Commission itself has recognized the inequities that have arisen in sentencing in the money laundering context" because of alleged inconsistencies in the charging of money laundering offenses and the application of the guidelines.

Citing the numerous letters his supporters sent to the district court prior to sentencing and 13 additional letters from friends and professional associates submitted in support of his clemency application that recount his many good deeds and kindnesses to others, petitioner maintains that commutation is appropriate because of his "extraordinary history of assisting other people in need." He explains that he has continued his good works in prison through his work as a tutor, law librarian, and instructor in the adult continuing education program,[23] that "[u]pon his release, [he] will seek to continue his public service," that he is interested in "counseling youths

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[21]According to a letter from petitioner's trial counsel to the United States Attorney for the Southern District of New York, which was submitted to the Office of the Pardon Attorney as an exhibit in support of the commutation petition, Spence "had an extensive criminal background which was detailed when he testified as a government witness." In the letter, petitioner's counsel represented that in addition to two misdemeanor convictions and various fraud, theft, and extortion schemes for which he was never prosecuted, Spence was also arrested on charges of conspiracy to murder and solicitation of a crime, which were later dismissed.

[22]Although petitioner's counsel in the clemency proceeding complains that "official antagonism" appears to exist toward petitioner, he acknowledges that "[t]here was no prosecutorial misconduct of any kind by anyone in the Southern District of New York that caused the harsh sentence" petitioner received. The United States Attorney represents that the information petitioner proffered after his guilty plea "consisted primarily of allegations against Hirsch as well as innuendo and rumors regarding other persons whom the Government had no reason to suspect of wrongdoing" (footnote omitted). Regarding the former category of information, "the Government had acquired independent knowledge of Hirsch's violations"; as to the latter, "after a preliminary inquiry, the Government did not believe any further investigation was warranted" (footnote omitted).

[23]In support of his commutation request, petitioner has submitted statements from three of his fellow inmates attesting to the positive influence he has had upon them, as well as a memorandum from the counselor of his housing unit complimenting his work performance and his actions "as an intermediary between staff and the inmate population."

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traumatized by crime," and that he will have the assistance of professionals in the field in obtaining such employment. Asserting that the interests of punishment and rehabilitation have already been met, he contends that he has been severely punished for his offenses by his arrest, forced resignation from the bar and loss of his practice, forfeiture of his assets, public humiliation, and the four and one-half years he has served in prison to date. Furthermore, he argues, given his overall history, "there is no basis whatsoever to believe that [he] will ever again commit a crime."

Finally, petitioner seeks clemency on the ground that his absence has had a destructive impact upon his family despite his efforts "to remain a devoted and involved parent." While arguing that his absence has worked hardship on his wife and older son, he asserts in particular that his "arrest and incarceration have caused his youngest son (*sic*) . . . to suffer a major depressive disorder" requiring psychiatric treatment,[24] a six-week commitment to a psychiatric hospital in the spring of 1999, and his current residence away from his mother and brother at a small boarding school in upstate New York. According to the son's on-site therapist and school counselor, this institution is geared "to the needs of children and adolescents with moderate special needs, hopefully preventing the need for more restrictive settings for students like [petitioner's son] who are at significant psychological risk." Noting the close relationship petitioner has always had with the boy and the child's dependence upon him, the school counselor, petitioner's wife, and many of petitioner's supporters urge that his sentence be commuted so that he can assist in his son's recuperation.

Official comments:

The United States Attorney for the Southern District of New York, the Honorable Mary Jo White, opposes petitioner's request for commutation of sentence.[25] As an initial matter, she disputes petitioner's description of his role in the money laundering conspiracy. Citing his own admissions at the guilty plea hearing, see note 14, *supra*, and accompanying text, and in the recorded conversations with Hirsch, see notes 3 and 6, *supra*, Ms. White contends that "the evidence amply demonstrates both Weinig's knowledge of and enthusiasm to participate in this scheme."

The United States Attorney further asserts that petitioner "misstates his role in the extortion scheme," and she challenges the validity of his argument that "he should be exonerated on [the misprision] count because his ethical duties as a lawyer prevented him from disclosing confidential information." Ms. White explains that the "extortion charge . . . stemmed not from Weinig's failure to interfere with the kidnapping, but rather from his affirmative efforts to conceal and further his client's extortion of Clooney" (footnote omitted). Moreover, she

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[24]Petitioner has submitted letters from his son's treating psychiatrist to his defense counsel and the sentencing judge opining that the boy's psychiatric difficulties "were precipitated by the abrupt and harsh arrest of his father, and the extended period of uncertainty regarding his father's fate." The doctor urged that petitioner receive a lenient sentence because his extended absence in prison would have "grave effects" on his son's mental health.

[25]The former Assistant United States Attorneys who prosecuted petitioner likewise oppose clemency.

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continues, "the tapes of Weinig's conversations with Hirsch regarding the kidnapping [see text at page 4, *supra*] provide perhaps the greatest example of Weinig's shocking lack of morality or care for the rule of law." Characterizing as "perverse" petitioner's "suggest[ion] that New York [S]tate's ethics rules either compelled, or at least justified, his conduct," Ms. White notes that

> Spence clearly did not tell Weinig about the kidnapping because he was seeking legal advice; to the contrary, Spence called upon Weinig because he desired Weinig's assistance in obtaining the ransom from Clooney. Nothing in the ethics rules governing attorney conduct in New York State (or any other state for that matter) sanctions one's affirmative participation in a crime, let alone the collection of ransom from a kidnap victim, which is exactly what Weinig directed his law firm's associates to do (emphasis in original).

Furthermore, citing the description of petitioner's conduct in the decision the Appellate Division of the State of New York issued upon accepting his resignation from the bar, see text at page 8, *supra*, the United States Attorney opines that the "whatever Weinig's view of the state's ethics rules, the [court] did not share it . . . ."

Ms. White also contests petitioner's "claim[] that he is entitled to a commutation of his sentence because he received a longer sentence than his other co-conspirators." She points out that several co-conspirators, such as Salerno and Tohmes, "received significant jail sentences for their conduct."[26] See text at page 9 and note 19, *supra*. Moreover, she observes, petitioner

> did not occupy the same position as his co-conspirators. First, unlike most of his co-conspirators, Weinig was an attorney, who had been successful in the past and had no reason to engage in illegal activity other than sheer greed. Second, unlike other co-conspirators such as Hirsch and Spence, Weinig repeatedly rejected the opportunity to cooperate with the Government and admit his guilt until the eve of trial [footnote omitted].
>
> Finally, to the extent a disparity exists between Weinig's sentence and those of his money-laundering co-conspirators, this disparity is justified because Weinig blithely participated in and caused his own law firm to further the extortion of a kidnap victim.

Noting that petitioner's misprision offense did not increase his applicable offense level under the Sentencing Guidelines, Ms. White contends he "now argues that it should not be considered at all for purposes of his commutation request (emphasis in original)." In her view, such a claim is "plainly rebutted" by the provision of U.S.S.G. § 3D1.4 that "explicitly state[s] that even though

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[26] Ms. White also represents that Richard Messina, the intermediary who negotiated the ransom with Clooney's relatives during the abduction and accepted cash from Clooney during the meeting at petitioner's law firm, "was sentenced to a term of over 12 years' imprisonment for his role in the extortion scheme."

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a given charge may not increase the applicable offense level it still may 'provide a reason for sentencing at the higher end of the sentencing range.'" See note 13, *supra*. Furthermore, she continues, if petitioner's clemency application "is premised on the argument that his sentence is overly harsh, then surely a proper analysis of that sentence must include a review of all of Weinig's conduct, such as his callous indifference to Clooney's well-being, and not merely the generosity he allegedly bestowed upon his friends and loved ones (emphasis in original)."

Finally, Ms. White asserts, petitioner's family situation does not justify commutation. She notes that his son had already begun to suffer psychological difficulties before the sentencing hearing occurred, and that petitioner brought this fact to the court's attention. While acknowledging the tragedy of his son's mental and emotional problems, the United States Attorney points out that such problems are not unique to petitioner's loved ones.

> Families of all or most convicted criminals are impacted adversely by their family member's incarceration. It is indeed unfortunate that Harvey Weinig's criminal activities (including the safeguarding of drug proceeds at his residence) and the subsequent legal consequences of those activities [have] resulted in a deterioration in [his son's] mental health. Nevertheless, [the boy's] mental problems (and his presumed need for his father) cannot erase the fact that his father engaged in a scheme to launder millions of dollars from the sale of cocaine and further used his position as a lawyer to assist an associate in extortion . . . .

The sentencing judge, the Honorable Kevin Thomas Duffy, did not comment on petitioner's clemency request "other than to point out that Mr. Weinig was sentenced within the Guidelines' range and that the Commutation Application contains no facts not known to the prosecution and the sentencing court at the time of conviction."

Reasons for denial:

Petitioner was a well-respected lawyer who used his professional skills to assist in laundering millions of dollars that he knew constituted the proceeds of a huge narcotics trafficking enterprise. He was involved in this activity for an extended period of time, and he admits that he engaged in it purely out of greed. While he was involved in that ongoing crime, he and his confederates stole $2.4 million from the drug-trafficker clients they were servicing, again out of greed. Petitioner also aided and abetted the extortion of money from an individual he knew had been kidnapped at the direction of a co-defendant in order to coerce the production of a ransom. Significantly, despite his position as an attorney and his knowledge of the ongoing kidnapping, he apparently made no effort whatsoever to attempt to dissuade his co-defendant from that course of criminal conduct.

The seriousness of petitioner's various crimes and the fact that he committed them while he was a member of the bar weighs heavily against commutation of his 135-month sentence. Although the prison term imposed upon him is long, it is commensurate with the gravity of his misconduct. Indeed, the length of his sentence is directly attributable to the various aggravating

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factors that played a significant role in its calculation – *i.e.*, the extremely large amount of money petitioner helped to launder, the fact that he knew that the money represented the proceeds of narcotics trafficking, and the fact that he used his special skills as an attorney to ensure that the offense would succeed. But for these aggravating factors, over which he had control, petitioner's sentencing range (108-135 months) would have been considerably lower. Accordingly, he cannot legitimately complain that his money laundering sentence falls above the median money laundering sentence of 24 months cited in the Sentencing Commission's 1998 statistics. Furthermore, his argument that his offense has been too severely punished under the money laundering guidelines is unpersuasive, because his misconduct of assisting in the laundering of millions of dollars that he knew were narcotics proceeds unquestionably falls squarely within the heartland of drug-related financial crimes that Congress sought to punish severely through the money laundering statute and its sentencing guidelines.

It is also unavailing for petitioner to complain that the sentencing court improperly considered his involvement in the extortion scheme underlying the misprision offense in deciding to sentence him at the top of the applicable sentencing range. Not only was the court fully entitled to take this fact into account under the sentencing guidelines, see note 13, *supra*, but it would have been remiss in not doing so. Petitioner's actions in that separate offense, to which he had pled guilty, revealed volumes about his attitude toward the law and his obligations as an officer of the court. It therefore was appropriate for the sentencing judge to consider this information in assessing the accuracy of the testimonials petitioner's colleagues and friends presented regarding his good character. It is equally proper to consider this conduct in determining whether petitioner's sentence should be commuted, and it is telling that he now claims that he learned of the kidnapping only after the victim had been released. Given that his contemporaneous recorded telephone conversations flatly disprove that claim, see text at pages 3-4, *supra*, his present assertions suggest that he is unwilling to accept full responsibility for his role in the extortion scheme.

The difference between petitioner's sentence and the three-year prison terms imposed upon his principal co-defendants likewise does not warrant commutation. Just as he seeks to underplay his involvement in the extortion scheme, petitioner significantly minimizes his role in the money laundering offense by characterizing himself – contrary to the evidence – as "a belated and minor participant in the conspiracy." While it is true that petitioner was less frequently involved in the day-to-day business of transferring funds, he participated in the planning and oversight of the operation, wired money when needed, assisted in recovering seized funds, and participated fully in the enterprise's profits. Moreover, unlike his partners in the operation, petitioner elected not to cooperate with the government at the first opportunity. To the contrary, he rejected repeated requests from the prosecutors for assistance and did not enter a plea agreement until the eve of trial, nearly 10 months after his arrest and long after his principal confederates had pled guilty. Petitioner thus has no one but himself to blame for the fact that, unlike his co-defendants, he was not the beneficiary of a government motion for a downward departure at sentencing, since his own choices precluded him from providing the kind of assistance that would have warranted such a request. The very plea bargain he made reflects that fact, for its terms did not contemplate consideration of such a motion by the government. Under these circumstances, commuting petitioner's sentence to the five-year term he proposes would

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significantly undermine the government's legitimate and important policy interests in encouraging early and complete cooperation by criminal defendants.

Petitioner's remaining arguments for clemency do not distinguish him from other convicted felons, many of whom are members of minorities, who have enjoyed fewer advantages than he, have served longer portions of lengthy sentences, and whose clemency requests you have denied. Many such prisoners have maintained favorable records of prison adjustment and have occupied their time with useful pursuits. Many prisoners argue with similar force that they have been adequately punished and rehabilitated, that they are unlikely to commit other crimes, and that their further incarceration serves no purpose. Finally, petitioner's family hardships do not differ from those of thousands of inmates in the federal prison system. A felon's incarceration virtually always has an adverse impact upon his family, especially his children. Each year, hundreds of inmates file commutation petitions in which they describe serious economic, medical, psychological, and other difficulties suffered by family members that have been caused or aggravated by the inmates' absence. In this regard, petitioner's family is far better off than those of most inmates, because his family has resources to address these problems that most other clemency applicants lack. A commutation of his sentence in the face of the denial of clemency to so many others whose family hardships are as grave or graver might well be misinterpreted as suggesting that well-off, white-collar offenders are deserving of special consideration in the clemency context.

In summary, the prison term imposed upon petitioner by the court was within the sentencing range he agreed applied to his conduct, appropriately reflects the very serious nature of his offenses, and is not disproportionate to the sentences imposed upon his differently situated confederates. As of the present time, he has served less than half of this sentence. To commute his prison term to the five years he proposes would denigrate the seriousness of his criminal misconduct, undermine the government's legitimate interest in encouraging prompt guilty pleas and truthful cooperation from criminal defendants, and could give the appearance of granting special consideration to economically advantaged, white-collar offenders. For these reasons and because of the strong opposition of the United States Attorney to clemency, I recommend that you deny the petition.

Respectfully submitted,

Deputy Attorney General

Date: _____

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DOC # 212

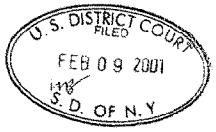
U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 21, 1996

BY HAND



The Honorable Kevin Thomas Duffy
United States District Judge
United States Courthouse, Room 1205
Foley Square
New York, New York 10007

United States v. Harvey Weinig,
S4 94 Cr. 981 (KTD)

Dear Judge Duffy:

The Government respectfully submits this letter in connection with the sentencing of Harvey Weinig, scheduled for March 22, 1996, at 9:30 a.m.

Both in his allocution and in his "Statement of the Offense," a copy of which is appended to the Presentence Investigation Report, Mr. Weinig has sought to minimize his role in the money laundering conspiracy and extortion scheme charged in the Superseding Indictment, by asserting that Robert Hirsch and Richard Spence, his coconspirators, were substantially more culpable than he.

Specifically, Mr. Weinig asserts: (i) that with respect to the money laundering conspiracy he was less involved than Spence and Hirsch in the day-to-day operations of the organization, and was often intentionally kept in the dark as to precisely what was occuring; and, (ii) that with respect to the extortion scheme, he was not told about the kidnapping until after the victim, James Cloney, actually had been abducted, and even when told about it limited his involvement to assigning two lawyers at his firm to handle the conveyance of the property used to pay the ransom. The Government has several responses to these assertions.

SEN.LET



First, both Hirsch and Spence, each of whom has been cooperating with the Government since the day he was arrested, have separately maintained from the outset (and in numerous proffer sessions) that Mr. Weinig was intimately and deeply involved in the operations of the money laundering organization from its inception. Both repeatedly have stated that Mr. Weinig:

(i) in approximately January 1994, participated in the decision to become engaged in the money laundering business;

(ii) in approximately January 1994, participated in the early discussions concerning the division of income generated by the business;

(iii) in approximately February 1994, participated in the decision to seek the return of substantial amounts of cash seized from couriers by submitting false statements to the DEA concerning the origin and nature of the cash seized from those couriers;

(iv) between February and August 1994, received over $1 million in cash as a result of his participation in the illicit scheme;

(v) in approximately April 1994, participated in a series of meetings and discussions which culminated in the theft by Spence, Hirsch and Weinig of approximately $2.4 million from their money laundering clients;

(vi) in approximately April 1994, was aware that Hirsch created a false criminal indictment and seizure notice naming Spence as the defendant, which false document was sent to the organization's clients as a means of covering-up the theft of the $2.4 million;

(vii) in approximately May 1994, participated in the decision to begin using the Hirsch Weinig attorney trust account to launder cash; and,

(viii) from approximately June through August 1994, participated in the wire transfer of money laundering proceeds through the Hirsch Weinig accounts to European and various off-shore accounts controlled by the organization's clients.

On the basis of the substantial similarity of the statements provided by Hirsch and Spence -- who have been separated since the day of Spence's arrest and at all times relevant to their cooperation -- as well as other corroborating evidence, the Government believes these statements by Hirsch and Spence to be substantially accurate. While it is clear that Mr. Weinig was not actively involved in carrying out the organization's day-to-day activities (such as recruiting couriers, arranging cash pick-ups or depositing cash in the organization's accounts), it is equally clear that he was generally aware of these activities, and spoke frequently to Hirsch and Spence about them.

Second, the investigation produced an overwhelming number of recorded conversations involving Mr. Weinig which are unambiguous in their inculpation of Mr. Weinig. For example, in conversation recorded in early October 1994, Weinig and Hirsch discussed the theft of the $2.4 million:

HARVEY WEINIG: And all of the sudden, someone says to me, I can put a million in cash in your . . .

ROBERT HIRSCH: Oh, God. I'm sick.

HARVEY WEINIG: In your, in your attic. I do a quick analysis, and understand that if everything else goes wrong in the world for the rest of my life, a million in cash takes care of everything I'll ever need.

ROBERT HIRSCH: That's true.

HARVEY WEINIG: And so I said, I'm dealing with people, and I remember this was, this was my approach. We're dealing with people who are total assholes, who are out of control, who are scumbag, lying, cheats. And I am gonna be in this for the long haul? Fuck 'em! Fuck 'em! I'm taking a million dollars and let's, let's see you get it from me. That was my approach.

ROBERT HIRSCH: But remember the other . . .

HARVEY WEINIG: A million fucking dollars.

ROBERT HIRSCH: A million dollars, but where, you know . . .

HARVEY WEINIG: This is not . . .

ROBERT HIRSCH How much you would have had today?

HARVEY WEINIG: This is not, this is dealing with normal Americans. This is dealing with guys I wouldn't take a telephone call from.

In an additional conversation between Hirsch and Weinig recorded around the same time, Weinig and Hirsch discussed laundering an additional $2 million for one of their Colombian clients:

ROBERT HIRSCH: There's two things happening. This weekend. Chicago and Miami. Million dollars each.

HARVEY WEINIG: Miami?

ROBERT HIRSCH: Yes. She called like that, she says: "Mr Robert, can you, can, do you know where Maria is?" I said: "What?" She said: "Maria, you know at the end of your country." I said: "What are you talking about Juliana?" She says: "No, no, you know we're calling Miami Maria." I said: "O.K. What's the deal?" She said: "Can you work there?" I said: "Yes." She said: "Um, you know, it's a little bit more, it's a little bit more expensive if we have to work in Miami as opposed to if we work by you, so until we get Mr. . . . " She said: "I have a connection in Miami, to do work, just so we can get the first container. And then Mr. Fred can be with us, and then we'll get the container in Chicago this weekend, and then we can do work the regular way" I said: "O.K." And so she, some person called her in, and I said, you know . . .

HARVEY WEINIG: And our man is okay with Miami?

ROBERT HIRSCH: Our man is in Miami.

In early November 1994, Hirsch and Weinig engaged in a recorded conversation during which Weinig looked back on their

money laundering partnership with Spence, making clear that it was an equal partnership from the outset:

HARVEY WEINIG: We schlepped forward because we believed, at least I did, that Dickie Spence made a bad deal for himself, a third, a third, a third. And it's not that I feel for him today. Number two, we schlepped forward because he was the only game in town. He was the only person we knew who could put, get money to a bank. And we had no alternatives, you know? We talked about it but we had none, so we used Dick. We understand what it was.

* * *

ROBERT HIRSCH: You know, I, I also don't understand how you say he cut, you know, this, this nonsense, that you have, that you feel guilty that you think he cut a bad deal.

HARVEY WEINIG: I always thought he cut a bad deal for himself. You, you know I always thought . . .

ROBERT HIRSCH: He made millions of dollars how bad can, what, what are you talking about?

HARVEY WEINIG: He made millions of dollars, but . . .

ROBERT HIRSCH: What did he do, send a guy on a plane to pick up a, a . . . what are you talking about?

HARVEY WEINIG: When it started, a third, a third, a third, was not the right deal. I always maintained that. He was taking the phone calls, he was picking up the money, he was sending the money out. He was doing everything.

ROBERT HIRSCH: You know how many months?

HARVEY WEINIG: Basically, what we were was a funder. That changed, but initially, a third, a third, a third, was not the right deal. That, those are my feelings, you know that. I said that to you the day that he cut the deal.

These recordings plainly undermine Weinig's assertion that he was unaware of what Hirsch and Spence were doing. Indeed, they reflect a high level of involvement in, and complete understanding of, the conspiracies money laundering activities.

Third, the Government respectfully submits that whether Mr. Weinig was more or less involved in the money laundering conspiracy than were Hirsch and Spence ultimately is irrelevant to his sentencing. Hirsch and Spence, both of whom are in custody, will be sentenced in the coming months, and their conduct will be fully considered at that time. For the moment, the focus should be on Weinig's illegal conduct which was extremely serious and reprehensible--however it compares to that of his coconspirators. The fundamental fact is that Mr. Weinig was a highly educated and highly successful lawyer who knowingly engaged in the laundering of drug money not as a result of financial hardship or need, but as a result of unmitigated, unrelenting greed and arrogance.

Fourth, with regard to the kidnapping, the Government does not dispute, at least for purposes of Weinig's sentencing, Weinig's assertions that: (i) he did not participate in the actual kidnapping of Mr. Clooney; and(ii) he did not learn about the kidnapping until after it had occurred. Here again, the Government respectfully submits that Weinig's criminal conduct should be reviewed independently of that of the other criminals involved. Under any standard, Weinig's conduct -- particularly as a lawyer -- was chilling.

For example, on approximately November 15, 1994, Weinig spoke to Spence by telephone about the kidnapping of Clooney. Later that day, Weinig informed Hirsch about what he had learned:

HARVEY WEINIG: (U/I). Today, he may be getting his money from this guy CIooney (U/1).

ROBERT HIRSCH: Who's Clooney?

HARVEY WEINIG: Clooney's the guy at Biltmore Mortgage that.

ROBERT HIRSCH: Oh.

HARVEY WEINIG: He's the president.

ROBERT HIRSCH: He's the president of the bank, you mean?

HARVEY WEINIG: (UI). You know what Dicky [Spence] did?

ROBERT HIRSCH: What?

HARVEY WEINIG: Seized him.

ROBERT HIRSCH: He seized a person? What? Come again?

HARVEY WEINIG: He seized a person.

ROBERT HIRSCH: Threatened to pick up this person?

HARVEY WEINIG: Well, not personally. He sent somebody.

ROBERT HIRSCH: Did he hurt the person?

HARVEY WEINIG: No. He's in protective custody.

ROBERT HIRSCH: He learned it from the Colombians.

HARVEY WEINIG: Yeah.

ROBERT HIRSCH: He learned it from then?

HARVEY WEINIG: Yeah.

ROBERT HIRSCH: Heh, heh.

HARVEY WEINIG: And he'll be released as soon as his family produces money and . . . (UI)

* * *

ROBERT HIRSCH: Well that's (U/I). If someone held you hostage, because (UI) would you call the Police and say.

HARVEY WEINIG: Well, he's not in a position to call the Police at this point (UI), right?

On November 16, 1994, Clooney was released on the agreement that he would bring the ransom to Hirsch Weinig later that day so that it could be conveyed to Spence. Hours before Clooney arrived at the firm to convey the ransom, Weinig and Hirsch again discussed the kidnapping:

ROBERT HIRSCH: Listen, here's what I came to last night, another epiphany; he shouldn't be kidnapping people, it's just not good.

HARVEY WEINIG: You're right, but are you, are you gonna stop him? He's already kidnapped him. (UI) with a fait accompli.

ROBERT HIRSCH: We should dissuade him.

HARVEY WEINIG: He's done it.

ROBERT HIRSCH: Are you sure?

HARVEY WEINIG: Yeah, and it's falling apart.

ROBERT HIRSCH: What do you mean?

HARVEY WEINIG: I mean . . .

ROBERT HIRSCH: They went to the, the authorities?

HARVEY WEINIG: Apparently.

ROBERT HIRSCH: Already, while the guy was kidnapped?

HARVEY WEINIG: I don't, I don't know the, the timing of it, I don't want to know about it.

Later that day, Weinig told Hirsch that Clooney was coming to the firm later in the day to convey the ransom, and that he did not want to be around when Clooney arrived. In the late afternoon of the same day, Clooney and his girlfriend arrived at Hirsch Weinig with the ransom. Two Hirsch Weinig lawyers then conducted a closing at which the ransom was transferred to Spence (in his wife's name). Weinig was not only aware of the closing, but had assigned two lawyers to handle it, and then left the firm so as not to be present while the closing occurred. Thus, while Weinig may not have been directly involved in kidnapping and holding Clooney, he plainly knew all of the relevant facts while Clooney was being held hostage, and agreed to facilitate the extortion scheme by participating in the conveyance of the ransom.

Conclusion

In sum, there is no question that Weinig was centrally involved in the money laundering conspiracy with Hirsch and Spence from its inception, and that his participation in the kidnapping scheme involved assisting in the actual tranfer of the ransom. To the extent that Weinig seeks to convince the Court at sentencing that he was a passive and silent partner in these criminal activites being pushed and pulled by those around him, it is the Government's view -- supported by the evidence -- that nothing could be further from the truth.

Respectfully submitted,

Mary Jo White
United States Attorney

By: _____
Lev L. Dassin
Assistant United States Attorney
Tel.: (212) 791-1614

By: _____
Mark P. Goodman
Special Assistant United
States Attorney
Tel.: (212) 909-7253

cc: John R. Wing
(By facsimile)

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JOHN R. WING
[redacted]

February 28, 1997

BY HAND

Mary Jo White
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

Re: Harvey Weinig

Dear Mary Jo:

Potter Stewart once said that "fairness is what justice really is." I write to ask your help to achieve that measure of "fairness" for Harvey Weinig. You may recall Mr. Weinig was one of twenty three defendants charged by your office in late 1994 with participating in an international money laundering operation. The enormous disparity between Mr. Weinig's 11 YEAR 3 MONTH prison sentence and his co-defendants' sentences[1] -- ranging from probation to three years imprisonment -- is unfair and unjust by any standard.

This grossly excessive disparity is particularly unfair given the fact that Mr. Weinig pled guilty and assisted the government as best he could by (a) urging the government's chief informant, codefendant Hirsch, to forgo secrete plans to flee the

1. Carroll - 2 years 3 months; Christov - Probation; Hayden - Probation; Herman - 6 months house arrest; Hirsch - 3 years; Kalanz - 8 months; Leifer - 1 year 8 months; Schwartz - 2 years; Spence - 3 years; Tanon - 2 years 3 months; Leon Weinmann - Probation; Rachel Weinmann - Probation; criminal charges against Bruno, Janz, Ezell and Dilluvio were dismissed. Thomas, Ocampo, Botero, Valencia, Juliana and Lopez remain fugitives, although the first two were arrested and may be prosecuted in Germany and Columbia, respectively. Salerno has not yet been sentenced.

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EXHIBIT
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jurisdiction, (b) providing information requested by your office about the money laundering case and other matters and (c) offering to testify if needed at a related trial. Moreover, unlike a number of his codefendants with prior criminal backgrounds, Harvey Weinig has spent a lifetime extending himself to help other people in a manner and to an extent unmatched by anyone I know.[2]

Judge Stanley Sporkin recently recognized that "a grave injustice would be committed" if no consideration was given to unwarranted disparities in sentencing. United States v. Hart 876 F. Supp. 4, 6 (DC Cir. 1995). In granting a downward departure to a defendant who pled guilty to distributing cocaine, Judge Sporkin concluded:

> "There would be an inequity in sentencing this defendant as the government suggests to a sentence of some three years more than a more culpable [cooperating] codefendant who has broken his agreement with the government and fled the country."[3]

The resemblance is striking. Hirsch broke his agreement with the government and would have fled the country had it not been for Weinig's urging him to remain and the government discovering his duplicity and rearresting him for ongoing money laundering activities. Weinig's sentence is not three, but eight years more than the prison term imposed on Hirsch, notwithstanding the latter's betrayal of your office and brazen continuation of the drug money laundering business. I understand that sometimes life is unfair, but I also know that you have the power to do justice.

When I originally discussed a plea in Harvey's case with Assistant U.S. Attorney Mark Goodman, who was in charge of these money laundering prosecutions, he expressed the view that a 5 to 7 year prison sentence would be appropriate. The plea agreement ultimately offered to Mr. Weinig stipulated a substantially higher sentencing guideline, but in hindsight, Mr. Goodman's initial view seems most astute.

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2. I don't make this statement lightly. You may come to the same conclusion after reading the letters about Harvey included in the accompanying Appenidx (Tab 10).

3. Id. at 6 (emphasis added).

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Mr. Weinig remains willing to assist the government and can provide your office with substantial assistance in a significant tax evasion prosecution of a New York professional. In order to cure the unfair disparity in Mr. Weinig's sentence, I urge you to accept his cooperation and use it as a basis for a Rule 35 motion to reduce his 11 year sentence to 5 years. Such a reduction would still preserve an almost 2 to 1 differential between Mr. Weinig and the highest sentenced codefendants (should you conclude that such a differential is necessary), while eliminating the fundamental injustice of the enormous disparity now in effect. Since Rule 35 requires that any such motion would have to be filed within one year of Mr. Weinig's March 22, 1996 sentence, time is short.

In my many years of practice, I have never before written a letter of this sort to a United States Attorney and I recognize the highly unusual request that this letter embodies. However, the result in this case is so inconsistent with the ends of justice, that I feel professionally and personally compelled to make this plea. I know you to be a conscientious, hardworking U.S. Attorney with many other significant responsibilities. I beg you not to delegate this matter and to review the relevant material yourself. Only a thorough knowledge and understanding of the facts will enable you to appreciate why justice and fairness mandate a reduction of this sentence.

The following synopsis will give you a brief overview of Harvey Weinig's background, offenses, codefendants, character and assistance to the government. Documents setting forth the factual detail are collected for your review in the accompanying Appendix.[4]

Background

Harvey Weinig was born in Brooklyn, grew up in Queens, and with the benefit of a Regents Scholarship, attended Hobart College in upstate New York. His father

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4. The Appendix includes the original criminal complaint and supporting affidavit, the money laundering indictment and misprison information, Weinig's plea agreement and plea allocution statement, the Presentence Report, Wing's letter to A.U.S.A. Dassin detailing Weinig's assistance to the government; Wing's sentencing letters and A.U.S.A. Dassin's sentencing letter to Judge Duffy; Weinig's letter to Judge Duffy; letters submitted to Judge Duffy on behalf of Weinig, letters from Sam Weinig's psychiatrist.

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died of a heart attack while he was still in college, and Harvey prematurely assumed a life long role of caring for his dependent mother and disturbed younger sister. After graduation from Hobart, Harvey went to work in the jewelry business where his father had been employed. Two years later he was able to stop working on a full time basis and attend Hofstra University School of Law. At Hofstra, Harvey met and fell in love with Alice Morey, an extraordinary woman who became his wife in 1980. For the next sixteen years Harvey and Alice made their home in an upper west side apartment where they raised two sons, Jake (14) and Sam (10) in a remarkably warm and loving family environment.

After graduating from law school in 1974, Harvey honored Professor David Kadane's request that he accept a position as a clinical professor of law in the school's poverty law clinic. After several years of teaching, Harvey left Hofstra and went to work as a practicing civil litigator, first at Rivkin, Leff & Sherman in Garden City, Long Island, and later with Ressa, Nappi & Weinig in Port Washington. In 1989, Harvey became counsel to the New York City firm of Berger & Steingut, joining the firm as a partner one year later. Harvey's practice at these firms primarily involved general civil and commercial litigation, with some matrimonial matters and real estate closings. Harvey remained at Berger & Steingut until the firm dissolved in May, 1993.

At Berger & Steingut, Harvey first met the man who would become his nemesis -- Robert Hirsch. Hirsch became of counsel to Berger & Steingut in the summer of 1992 and remained with the firm until its dissolution approximately ten months later. Although Harvey only worked with Hirsch on one matter, he was attracted by Hirsch's intelligence, charm and flamboyance, and the breakup of Berger & Steingut precipitated the two men joining forces to form Hirsch Weinig. They brought with them from Berger & Steingut, two associates, two "of counsel" and a paralegal.

The new firm opened its doors in May of 1993 and began servicing a steady stream of clients with a variety of personal and commercial problems. Hirsch spoke several foreign languages fluently and had a number of foreign clients including Bertelsmann, one of the largest entertainment corporations in the world. Harvey's clients were primarily small

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businesses and individuals in the New York area. Although they weren't making an enormous amount of money, new clients continued to come in the door, Bertelsmann invited them to handle more of it's business (and to set up their offices in the Bertelsmann building on Broadway which they did) and the practice flourished.

The Offense

In October, 1993 Hirsch advised Weinig that he had been contacted by one of his former Israeli clients -- a man named Peter Thomes who was then living in Germany. Hirsch described Thomes as someone involved in world-wide distribution of parallel market or gray market goods including electronic equipment, computer equipment, health and beauty aids and other commodities. Hirsch explained that these products were being sold in geographic areas outside the particular geographic area where Thomes' companies were authorized to sell and that therefore these unauthorized parallel or gray market transactions were conducted strictly in cash.

Hirsch went on to explain that one of Thomes' couriers had been detained in Puerto Rico by the DEA and that approximately $270,000 in cash had been seized from him by agents who erroneously believed the cash to be the proceeds of illegal drug transactions. Thomes had asked Hirsch to take the necessary legal steps to secure the return of the money as well as another $260,000 that the courier had left in storage at a San Juan hotel. Hirsch advised Weinig that he had successfully handled a similar matter for Thomes several years earlier when another of Thomes' couriers had gray market money seized by the DEA in New Mexico. Hirsch told Weinig that he had persuaded the DEA to return the money since there was no evidence that the money was related to drugs. He advised Weinig that as a result of this prior work on behalf of Thomes he (Hirsch) was well versed in seizure law.

Hirsch and Weinig met with the courier, Alexander Schwartz at their office. Schwartz advised them that he had worked for Thomes for several years transporting commodities and cash upon Thomes' request. Although Schwartz's story of the facts surrounding the Puerto Rico seizure was somewhat incoherent and contradictory he did produce a receipt from the Sands Hotel in Puerto Rico where he had left the $260,000 in

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storage. Richard Spence, a retired fireman whom Weinig had represented in several commercial matters, was friendly with a number of police officers and had previously expressed a desire to do investigative work. Hirsch and Weinig decided to ask Spence to travel to Puerto Rico in an effort to locate the money that the courier had left at the hotel. Spence did travel to Puerto Rico but was unable to recover the money. Shortly thereafter Hirsch commenced a legal action on behalf of the courier against the Sands Hotel in the Federal Court for the Eastern District of New York. Hirsch told Weinig that Thomes did not want to appear as the claimant of the seized money since it might damage his relationship with his suppliers if it ever became known that he was selling merchandise outside his authorized area. Hirsch advised Weinig that Thomes would execute some papers effectively assigning the claim of the seized monies to Spence so that Spence could be the claimant of record. Hirsch said that Thomes had taken a similar position in the prior DEA seizure case in which Hirsch had successfully recovered the funds.

Weinig subsequently learned that Hirsch drafted a notice of claim to be submitted to the DEA by marking up the papers he had used in the earlier Thomes' case. In order to conceal the gray market source of the funds, the notice of claim documents included a sworn affidavit by Spence in which Spence claimed that he owned the money seized from Schwartz in Puerto Rico and that the money was the proceeds of transactions involving diamonds and precious metals.[5]

In late December 1993, Hirsch arranged a meeting at his home with Spence and Weinig where he suggested that Spence take-over the business of collecting and transporting Thomes' gray market money within the United States. Hirsch thought Spence could conduct the business more efficiently and intelligently and thereby avoid situations resulting in DEA seizures of the client's funds. It was agreed that profits derived from

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5. According to Spence's testimony at the Messina trial, Hirsch, not Weinig, handled the forfeiture proceedings. In the fall of 1994 when Hirsch didn't want to continue the forfeiture work (after he became a secret government informant), Spence sought other counsel to handle those matters rather than turn to Weinig. (T. 334).

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Spence's work would be divided equally between Spence, Hirsch and Weinig. Hirsch reported shortly thereafter that Thomes was agreeable to entering into this new arrangement.

Thereafter, between January 1994 and September 1994, Spence and Hirsch were actively involved on a regular basis in the transportation of money on behalf of Peter Thomes. For a time Spence received the phone calls from Thomes, dispatched a courier, caused the money to be returned to him in New York, and deposited the money in his Transglobal bank account in New York from which it was wired it to specified locations, primarily in Europe, as instructed by Thomes. In late January 1994, Hirsch travelled to Zurich to meet and discuss the cash transfer operations with Thomes and his Swiss bankers, Rachel and Leon Weinmann. Chaim Herman, who had previously been responsible for all cash pickups and transfers to the Weinmanns in Switzerland and now would be working with Hirsch and Spence, was also in attendance at this meeting.

Upon his return, Hirsch advised Weinig that Thomes was one of the largest distributors of electronic equipment in Eastern and Western Europe and was engaged in extensive parallel market activity throughout the world involving many different products and multi millions of dollars. Hirsch brought back promotional literature describing Thomes' company as "EXCLUSIVE DISTRIBUTORS FOR SANSUI PRODUCTS IN 20 COUNTRIES," along with a videotape referring to Thomes' company as a major distributor for Sansui.

In March 1994, Hirsch and Spence traveled to Florida to meet with Thomes who was attending a convention held by one of his primary suppliers, Herbalife. Weinig was not included in this trip nor did he meet Thomes when the client subsequently visited Hirsch in New York. In April 1994, Spence expressed an interest in terminating the arrangement as a result of increasing friction between Thomes and himself. Hirsch urged a continuation of the business and agreed to take over the job of dealing with Thomes. Spence remained responsible for picking the money up and putting it in the bank. On May 2, 1994, Hirsch travelled to Germany for another meeting with Thomes at which Weinig was not included.

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Although he was well aware that Hirsch and Spence were activiely involved in moving money for Thomes, Weinig's overall participation in the collection and transfer of Thomes' funds was extremely limited. He did not receive telephone calls or pick-up money or cause it to be deposited in banks. Occasionally when Hirsch was not in town he would ask Weinig to process wire transfers of these monies from the firm trust account to various other banks both in the United States and abroad, and Weinig would follow his instructions.[6]

Telephone conversations that were taped by government agents reflect that to some extent Hirsch and Spence attempted to keep Weinig in the dark about various aspects of what they were doing:

5/25/94	Tape D-13	Spence to Hirsch: Don't even mention it to Harvey. I'll take care of it and he'll think it comes from the other place.
6/3/94	Tape B-40	Hirsch: I'll give Harvey some spending money.
		Spence: I wouldn't tell him anything, just give it to him.
7/15/94	Tape C-60	Hirsch: I spoke to Harvey this morning . . . He doesn't know what he's doing I just told him -- he's not involved in this - He just knows he has to make some payment. He doesn't know what its about.
		Spence: That's no problem.
10/2/94	Tape K-64	Spence: A little word to the wise - I wouldn't go into detail with Harvey.
		Hirsch: What do you mean?

6. Between May and September 1994 when the money laundering transactions were in full swing and federal investigators were monitoring eight separate court authorized wire taps, the hundreds of conversations taped by the government about money laundering activities contained few references to Harvey Weinig. In September 1994 after Hirsch became a secret government informant and told Weinig that Thomes cash shippments were the proceeds of drug transactions, Hirsch started taping conversations with his partner.

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		Spence: I would just tell him you're going to sit and work things out . . . Don't ever tell him about the future or anything. Surprise him about what you give him and that's it.
		Hirsch: OK. I got you.
10/5/94	Tape K-73	Spence: Don't mention to Harvey you're gonna do the deal I would just give him the bonus cause I'm telling you he's going to tell you you're crazy.
		Hirsch: You think he's flipped out.
		Spence: Oh yea, without a doubt. He wants to get out of this thing as soon as he can. He's done with.
		Hirsch: You think so.
		Spence: Harvey's the most greediest person as far as those shoe boxes [with cash] are concerned but I don't think he likes the idea that goes with them.
		Hirsch: You mean the risk?
		Spence: Yeah, and he has no risk. He's not the one that's involved.

From the very start, Weinig had misgivings about the nature of the activity in which Thomes was engaged. He was initially assured by both Hirsch and Spence that the cash deliveries were not the proceeds of drug transactions. He accepted these early representations particularly from Spence who assured Weinig that he was a "street person" who knew about these things, and he was confident that this was not drug money. In his testimony as a government witness at the Messina trial, Spence confirmed that for many months he too "believed that the money" he was "picking up was gray market money" and not "drug money" (T.299). Spence's view did not change until sometime in the summer of 1994 when he received information from a New York City police officer (who was assisting Spence store and transport cash), that the federal government was investigating him for

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money laundering. (T.301) Spence testified that he told a number of other people who were involved in moving and/or storing of substantial cash packages that this money came from "the gray market" (T. 291-295)

Hirsch also continuously reassured Weinig about the legitimacy of his client and the client's parallel market business, and went out of his way to show Weinig documentation indicating that Thomes directed various payments from these parallel market funds to legitimate companies -- purported to be his suppliers -- such as SONY, Lucky Goldstar and Herbalife.

After deliberately ignoring indications that Thomes' gray market monies were in fact the proceeds of illicit drug transactions, Weinig ultimately came to realize that this was the fact. In September 1994, he was advised by Hirsch that Columbian drug dealers had threatened to kill Hirsch and his family as a result of Thomes' failure to deliver a substantial amount of their funds which had been processed by Hirsch and Spence. Unbeknownst to Weinig, Hirsch had been advised of these Columbian death threats by federal agents, who confronted Hirsch with the prospect of a lifetime in jail for money laundering -- or the option of earning a 5K1 letter by working as a secret government informant. Hirsch accepted the informant offer and spent the next two months secretly taping conversations with his partner Weinig and others.

By September 1994 Weinig had received over $700,000 in cash from Hirsch. These moneys included Weinig's share of the commissions received from the money transfer business as well as $500,000 which Hirsch had instructed Weinig to hold aside in view of the possibility that some or all of those monies might have to be returned to Thomes from whom they had been wrongfully withheld some months earlier. Hirsch pleaded that the only way to save his life and that of his wife and children was to pay this money to the Colombians, and Weinig promptly returned approximately $525,000 to Hirsch for that purpose.

In sum, Harvey Weinig did not initiate and was not a prime mover in this money laundering activity, although he was a direct beneficiary and well aware that Hirsch and Spence were involved in collecting and transporting large sums of cash on a regular

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basis. Weinig's initial involvement was precipitated by information from a trusted law partner concerning a prior business client purportedly involved in a substantial gray market business that generated huge sums of cash. In other words, Weinig was not someone who suddenly decided to intentionally involve himself in the business of laundering drug money. However, when Mr. Weinig ultimately learned that the monies were drug proceeds, he did not withdraw but endeavored to assist Hirsch secure his family's safety by returning funds to the drug dealers.

Mr. Weinig also pled guilty to misprision of a felony based on the following facts. In the fall of 1994, Spence asked for Weinig's legal assistance to recover approximately $237,000 which he had been fraudulently induced to invest in an insolvent mortgage company by a man named Clooney. Weinig assigned an associate to work on the matter but initial efforts to recover these funds through negotiations with Clooney's lawyer were unsuccessful. At some point Weinig was told that Mr. Clooney did not have money to return to Spence, but that he did have tangible assets such as real estate and paintings and that Clooney had agreed to transfer these assets to Spence to secure his acknowledged indebtedness to Spence.

Between November 9, and November 13, 1994 Weinig was out of the country. He was completely unaware that during this time Spence attempted to intimidate Clooney by having him held against his will. On November 15, after Weinig returned to New York, Spence reported that he had arranged for several individuals to illegally detain Clooney in an effort to compel him to return the money that he had wrongfully taken.[7]

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7. Contrary to Spence's testimony at the Messina trial, Weinig was not told about the kidnapping before November 12 when it took place. On November 11, when Spence first discussed the possibility of a kidnapping with Salerno (T. 175) -- and testified that he also "called" Weinig about it "that Friday [the 11th]" (T. 176, 381) -- Weinig was actually in London, having flown there with his family the night of November 9 for an affair on Saturday the 12th. The Weinig family returned to New York on Sunday night, November 13. The trip is evidenced by notations on Weinig's calendars for November 9 ("UK"), November 12 (the invitation to the London affair) November 13 ("Ret UK") and his passport showing arrival at Heathrow airport the morning of November 10. Spence's telephone

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The following day, November 16, Weinig was told that Clooney was a free man and would be coming to his office to sign legal documents transferring to Spence the previously promised security interest in certain assets to cover Clooney's debt. Weinig asked his associate to prepare the necessary documentation and later that day Clooney and his girlfriend came to the office and signed papers assigning to Spence a security interest in some artwork and a home mortgage. Weinig's misprison involved the failure to report the information conveyed to him by Spence to a magistrate or other judicial officer.
This misprison took place in a context of Mr. Weinig acting as Mr. Spence's lawyer. As such, he believed and expressed to some extent the view that he was precluded from reporting Spence's wrongdoing by his ethical obligation to preserve the confidentiality of his client's confidences and secrets.[8]

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7. (...continued)
records in the government's possession reflect no calls to London during this time. A government tape (J 15) reflects Weinig telling Hirsch on November 15, that he had just learned from Spence that he had someone seize Clooney that day: "you know what he [Spence] did today. I'll tell you what he did today . . . Today he went to get his money from that Clooney."

8. Confidences and secrets are defined as "information protected by the attorney-client privilege . . . and . . . information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client". Model Code of Professional Responsibility DR4-101(A). Concealing a client's secrets and confidences is a lawyer's obligation -- not a crime -- penalized and Mr. Weinig should not be for complying with his ethical obligations. See People v. Belge, 833 Misc. 2d 186, 191, 372 N.Y.S.2d 798, 803 (Sup. Ct. Onondaga Co. 1975), aff'd 50 A.D.2d 1088, 376 N.Y.S. 2d 771 (Dep't) aff'd 41 N.Y.2d 60, 390 N.Y.S.2d 67 (1976). (dismissing indictment against attorney who maintained client's confidence by failing to reveal location of murder victim's body "on grounds of a privileged communication.") See also Rios v. Parr, No. 88 Civ. 5984, 1989 U.S. Dist. Lexis 9199 (S.D.N.Y. August 7, 1989) where Judge Walker dismissed a civil RICO fraud complaint charging a lawyer with failing to disclose fraudulent conduct by his client. Judge Walker expressly rejected the claim that the lawyer was ethically obligated to reveal information obtained from third parties concerning his client's activities:

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In discussing the kidnapping with Hirsch on November 16, 1994, Mr. Weinig articulated the fact that as a lawyer he was only permitted to report a client where the crime is prospective[9] -- not where, as here, he learned about the kidnapping after the fact.

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8. (...continued)

> "a lawyer is under an affirmative duty not to disclose information obtained during the course of his representation of a certain client. A lawyer must preserve his client's confidences, defined as "information protected by the attorney client privilege," and his client's secrets defined as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or be likely to be detrimental to the client." DR4-101 (A). Accordingly, Clayton is under an affirmative duty not to disclose even the information allegedly obtained from "third parties."

9. 22 NYCRR § 1200.191 (Model Code of Professional Responsibility DR 4-101(A)(B) (1995). Confidences and secrets are defined as "information protected by the attorney-client privilege . . . and . . . information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client". Model Code of Professional Responsibility DR4-101(A). Since concealing a client's secrets and confidences is a lawyer's obligation -- not a crime -- Mr. Weinig should not be penalized for complying with his ethical obligations. See People v. Belge, 83 Misc. 2d 186, 191, 372 N.Y.S.2d 798, 803 (Sup. Ct. Onondaga Co. 1975), aff'd 50 A.D.2d 1088, 376 N.Y.S. 2d 771 (Dep't) aff'd 41 N.Y.2d 60, 390 N.Y.S.2d 67 (1976). (dismissing indictment against attorney who maintained client's confidence by failing to reveal location of murder victim's body "on grounds of a privileged communication.") See also Rios v. Parr, No. 88 Civ. 5984, 1989 U.S. Dist. Lexis 9199 (S.D.N.Y. August 7, 1989) where Judge Walker dismissed a civil RICO fraud complaint charging a lawyer with failing to disclose fraudulent conduct by his client. Judge Walker expressly rejected the claim that the lawyer was ethically obligated to reveal information obtained from third parties concerning his client's activities:

> "a lawyer is under an affirmative duty not to disclose information obtained during the course of his representation of a certain client. A lawyer must preserve his client's confidences, defined as "information detected by the attorney client privilege," and his client's secrets defined as "other information

(continued...)

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RH: We should dissuade him [Spence].

HW: He's done it.

RH: Are you sure?

HW: Yeah and it's falling apart.

* * *

HW: If he tells me a crime is going to be committed, then I have an obligation, I have to disclose it or go to the authorities.

RH: Right.

HW: But he didn't do that....[10]

Mr. Weinig clearly believed that James Clooney would not be hurt and said as much to Hirsch in the taped conversation on November 15.[11] His view that Clooney was not in any danger was apparently shared by the law enforcement agents who learned of the kidnapping from Hirsch on November 15, but took no action to remedy the situation by arresting Spence or the other participants.[12]

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9. (...continued)
gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or be likely to be detrimental to the client." DR4-101 (A). Accordingly, Clayton is under an affirmative duty not to disclose even the information allegedly obtained from "third parties."

10. See Tape J16.

11. "RH: Did he hurt the person?
HW: No. He's in protective custody."

12. It was later learned that Clooney was provided with steak and prostitutes during his "detention."

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Coconspirators

The original criminal complaint charged twenty two defendants with participating in a money laundering conspiracy which commenced in 1991 (two years before Hirsch invited Weinig to participate) and involved the transportation of substantial cash proceeds of narcotic sales from the United States, Canada and Puerto Rico to Europe and South America. The following descriptions of each defendant's involvement in the money laundering conspiracy are based on statements of fact attested to in the FBI agent's affidavit supporting the criminal complaint ("CCA").[13]

1. Chaim Herman, pled guilty to a money laundering conspiracy charge and was sentenced to six months house arrest. Herman was described in the criminal complaint as one of the "Leaders of the Organization in the United States", who "during the organization's early money laundering activities in the United States" [1991-93] "was primarily responsible for all cash pickups in the United States and for transferring cash to the Weinmann's in Switzerland. Herman later worked with Spence laundering money on behalf of the organization." (CCA ¶ 9, 11c) In a taped conversation Herman acknowledged having laundered 11 "containers" ($11 million) before he began working with Spence and Hirsch. (CCA ¶ 190)

2. Leon and Rachel Weinmann each pled guilty to a misdemeanor CTR violation and were sentenced to one year unsupervised probation with the understanding that they would return to Switzerland to respond to criminal money laundering charges filed there. It is my understanding that since the Weinmanns returned to Switzerland in May 1995, they have remained at liberty and have not been tried or convicted on any charges. The Weinmann's were described in the criminal complaint as "Leaders of the Organization in Europe," who "acknowledged having moved between $70 million and $100 million with Peter [Thomes] during the previous year [1993]." (CC ¶ 190)

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13. The complaint and supporting affidavit are included in the accompanying Appendix (Tab 1).

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3. Alexander Schwartz pled guilty to a money laundering conspiracy charge and was sentenced to prison for two years. Schwartz was described in the criminal complaint as a courier who picked up and transported large quantities of cash for Herman and Thomes both before and during the period when Hirsch and Spence were involved. On at least two occasions Schwartz was stopped by law enforcement officials and forced to surrender large sums of cash which he was carrying ($267,000 in Puerto Rico and $802,000 in Houston, Texas). Schwartz was using aliases of Rosenbaum and Rosenberg at the time and gave false information to the law enforcement agents who stopped him. (CCA ¶ 11 o, 18-20, 23-25, 27-28)

4. Menashe Leifer pled guilty to a money laundering conspiracy charge and was sentenced to prison for one year and eight months. Leifer "usually works with Spence and Herman, and performs various tasks in furtherance of the Organization's money laundering activities." (CCA ¶ 11 u) Taped conversations between Leifer and Spence indicate that Leifer collected and laundered substantial amounts of cash. (CCA ¶ 113,127-29, 132-33)

5. Robert Hirsch was confronted by government agents in September 1994, with the prospect of long-term incarceration for money laundering unless he cooperated and became a secret informant, at which point he became a government informant. On November 29, 1994 Hirsch pled guilty to conspiring to engage in money laundering of drug proceeds, and related crimes including participating in a scheme to defraud a Zurich bank of approximately $1 million and making false statements to the DEA. Hirsch also pled guilty to an unrelated fraud committed before he ever met Mr. Weinig, involving the submission of $40,000 in forged and fraudulent checks to Chemical Bank. Hirsch anticipated receiving a 5K1 letter and was not incarcerated at the time of his plea in November 1994.

In January and February 1995, at a series of secret meetings with Weinig, Hirsch revealed his plans to dupe the federal authorities and flee the jurisdiction. Weinig strenuously urged Hirsch to remain and testify at Weinig's trial to confirm that it was the

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Thomes gray market business version of events which had precipitated Weinig's involvement. Apparently persuaded, Hirsch was still in New York in June 1995, when the government rearrested him after discovering that he had returned to criminal money laundering activities and lied to the agents and the Assistants on material issues. On December 15, 1995, Hirsch pled guilty to additional money laundering of $2.2 million in cash proceeds of narcotics trafficking during the period April 1995 through May 1995 -- a time period when he was supposedly cooperating with the government. Hirsch also pled guilty to related bank fraud and forfeiture counts as well as to lying to the U.S. Attorney's office and the FBI. Hirsch received a 5K1 letter, and was sentenced to a three year prison term.

6. Richard Spence pled guilty to money laundering, wire fraud, false statements, extortion by kidnapping (the Clooney kidnapping), and mail fraud involving the use of false forms to obtain a pension as a New York City fireman. In addition to the crimes for which he pled guilty, Spence had an extensive criminal background which was detailed when he testified as a government witness. Spence had been arrested for conspiracy to murder and solicitation of crime (1982 - case dismissed), illegal gun possession (1986 misdemeanor conviction), and filing false excise tax forms (1990 - misdemeanor conviction). Other criminal activities for which he was never prosecuted included tax evasion ($2 million 1985-94), insurance frauds (1986 and 1994), food stamp fraud (1988-90), receiving stolen property (1990-94), and extortions (1994). Spence cooperated with the government, received a 5K1 letter and was sentenced to a three year prison term.

7. Dan Carroll pled guilty to a money laundering conspiracy charge and was sentenced to prison for two years and three months. Carroll was "one of Spence's most trusted couriers" who travelled "to various cities in the United States and abroad to pick up money for the organization and return with it to New York City." (CCA ¶ 11 p) Carroll's sophistication in the laundering business was evidenced during a taped conversation with Spence in which he reported that he had $1 million in cash in nine boxes at his home, and

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then recommended using motor homes to avoid "delivery" problems since "if they stop you they need a warrant to come in." (CCA ¶ 46)

8. Michael Kalanz, a New York City Police Officer acted "as a courier for the Organization" and was "responsbile for counting and storing substantial amounts of United States currency and transporting it to banks on behalf of the Organization. Kalanz . . . stored hundreds of thousands in United States currency in his locker at the 48th Precinct." (CCA ¶ 11 l, 62, 63, 66, 68-72, 80). The criminal complaint (count 17) also charged Kalanz with obstruction of justice for tipping off Spence to information that he was the subject of a federal investigation. (CCA ¶ 134) Kalanz pled guilty to obstruction of justice and was sentenced to prison for eight months.

9. Jose Tanon, another Spence courier who picked up large amounts of cash in Canada and New York, pled guilty to a money laundering conspiracy charge and was sentenced to prison for two years and three months. (CCA ¶ 38, 76, 97-98, 100-105)

10. Donald Hayden pled guilty to a money laundering conspiracy charge and an unrelated insurance fraud charge, cooperated with the government, received a 5K1 letter and was sentenced to three years probation. Hayden was a Laidlaw Equities registered representative who received "large quantities of cash at his office at Laidlaw Equities" and then "shipped the cash to Spence in New York." (CCA ¶ 11r) Hayden's awareness of the nature and scope of Spence's money laundering activities was evidenced in one taped conversation where Spence freely complained to Hayden about the stupidity of another person from whom he had received cash in a car that had been stopped and seized by Florida police because it lacked a valid registration sticker. (CCA ¶ 125)

11. Latchezar Christov pled guilty to a money laundering conspiracy charge and was sentenced to two years probation. Christov was also a Laidlaw Equities registered representative and an Honorary Counsel General for the Republic of Bulgaria who worked "with Hayden receiving cash and shipping it to Spence." (CCA ¶ 11s)

12. Charles Bruno was arrested on a money laundering conspiracy charge, but the charge was dismissed. Bruno acted "as a courier for the organization" who was

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arrested in Houston, Texas after picking up $1 million in cash from Schwartz. (CCA ¶ 11n, 24-25)

13. Robert Janz was arrested on a money laundering conspiracy charge, but the charge was dismissed. Janz "often brings cash that has been received and counted by the Organization to a bank for deposit and sometimes acts as a courier for the organization." (CCA ¶ 11 t, 74-76, 78-79).

14. Sylvia Ezell, Spence's secretary, was arrested on a money laundering conspiracy charge but the charge was dismissed. Ezell made "arrangements on behalf of the Organization. to pick up, transport and wire-transfer the proceeds of illegal narcotics trafficking." (CCA ¶ 11v, 65-68, 76-81, 184) On one occasion Spence instructed Ezell that when Kalanz arrival with "five packages containing $1.1 million" she "should put them in suitcases with the deposit slips and send them where they had to go." (CCA ¶ 71)

15. Patricia Dilluvio, a "corrupt" assistant branch manger at Citibank was arrested on a money laundering conspiracy charge, but the charge was dismissed. Dilluvio accepted "large sums of cash brought by other members of the Organization" and transferred "the funds through various accounts on behalf of the organization." (CCA ¶ 11w, 53, 57, 66-68, 73, 77, 80).

16. Gary Salerno, a courier and an enforcer who participated in the kidnapping of Clooney, pled guilty to a money laundering conspiracy charge and extortion and has not been sentenced.

17. Peter Thomes and Juan Ocampo remain fugitives and apparently will not be prosecuted in the United States although Thomes was arrested and may be prosecuted in Germany and Ocampo was arrested and may be prosecuted in Columbia. Other codefendents who are fugitives and in all likelihood will never be prosecuted include, Miguel Botero, Amparo Hurtado Valencia, Juliana LNU, a.k.a. "Bonnie", and Carlos Lopez.

Assistance To The Government

Harvey Weinig tried to make amends for his wrongdoing by pleading guilty, acknowledging his illegal conduct and agreeing to forfeit substantial assets to the

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government. In addition, Mr. Weinig indicated his willingness to provide whatever assistance and cooperation might be helpful in connection with the government's continuing investigations and prosecutions in these and other matters.

Shortly before Harvey entered his plea, Assistant U.S. Attorney Mark Goodman, who was then in charge of the case, asked whether Harvey would be willing to answer questions with respect to four specific matters, including Mr. Messina's involvement in the Spence extortion of Clooney. Mr. Goodman was told that Harvey would be willing to cooperate and furnish whatever information was requested. Mr. Goodman was also advised that Harvey would be willing to wear a wire and record conversations in order to assist the government gather evidence and prosecute a man named Luckman who helped finance Hirsch's attempt to flee the country. The lack of sufficient time to evaluate or plan such an operation before the fact of Harvey's plea would become public knowledge obviated the possibility of such an undertaking.

At the request of A.U.S.A. Goodman, Harvey met for six or seven hours with Mr. Goodman, FBI Agent Stuart McArthur and one other FBI agent, on November 7, 1995, During that meeting Harvey answered extensive questions regarding his involvement in and knowledge of the activities referred to in the money laundering indictment. Towards the end of the meeting, Harvey provided the specific dates, times and locations of eight post-arrest meetings that took place between himself and Robert Hirsch. He also provided a comprehensive list of post-arrest telephone conversations between himself and Mr. Hirsch. Mr. Goodman and the agents were advised that Harvey had prepared contemporaneous memoranda of most of these meetings and telephone calls detailing conversations which clearly indicated that (a) Hirsch was preparing to abscond from the jurisdiction prior to Harvey's trial and (b) that a man named Harvey Luckman was involved in and probably could be prosecuted for helping to finance Hirsch's planned fugitivity. It became clear during this discussion that Mr. Hirsch had misled the government concerning the substance and extent of his meetings with Mr. Weinig. Both Mr. Goodman and the agents expressed a desire to see Weinig's written accounts of these conversations and he agreed to provide

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copies at the next meeting which was scheduled for November 13. This meeting was cancelled after Mr. Goodman accepted an offer to return to private practice.

The memoranda of the Hirsch-Weinig meetings were forwarded to Assistant U.S. Attorney Dassin[14] who assumed responsibility for the case, and he was advised of Mr. Weinig's willingness to appear for further debriefings and to assist the government with information and/or testimony in connection with the forthcoming Messina trial. Mr. Dassin declined these offers of assistance. At a later date, Mr. Dassin was provided with new information from Mr. Weinig about a prominent New York businessman who met and sought to participate with Hirsch in unrelated money laundering activities during the summer of 1994. The results of that investigation, if any, are unknown.

Mr. Weinig's greatest assistance to the government probably took place before he decided to enter a guilty plea, when he urged Robert Hirsch to defer plans to abscond from the jurisdiction. While pretending to be a compliant government informant, Hirsch, a master manipulator, was secretly planning to flee to Israel to avoid an anticipated jail sentence. Hirsch disclosed his intentions to Weinig in a series of post arrest meetings which he initiated without notifying his government handlers.

At the first such meeting on January 11, 1995, Hirsch asked Weinig if he would flee the jurisdiction to avoid trial. Weinig advised Hirsch that he had no interest in running away. Hirsch indicated somewhat obliquely that he was "making some contingency plans on that level for himself." On January 17, 1995, Hirsch cryptically advised Weinig that he knew what Weinig needed more than Hirsch's knowledge of the Thomes gray market machinations, but he refused to tell Weinig precisely what that was.

On January 26, 1995, Weinig had a telephone conversation with Harvey Luckman, a Hirsch client, wherein Luckman revealed that he had given Hirsch $50,000

14. My letter to Mr. Dassin of November 16, 1995 and the enclosed memoranda are included in the Appendix (Tab 6).

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(which he owed the law firm) and that Hirsch had asked for considerably more.[15] Two days later, on January 28, Hirsch told Weinig that he had just received a call from Luckman and he (Hirsch) urged Weinig to "trust" him about the Luckman money. "I've got a plan and I'm going to do the right thing for you and make it alright." Weinig pushed Hirsch to tell him what he was doing and what was going on. Hirsch replied,

> "OK. I don't want to tell you. But I swear on my children everything is going to be OK for you. It'll all work out. The next few months may not be so easy but its going to be fine for you I swear."

On January 30, 1995, Hirsch finally revealed his plan to Weinig.

> "Listen, I'm leaving -- I'm going to be getting out of here soon and without me there is no case against you...."

Hirsch advised Weinig that eventually he would be going to Israel, but not right away. Hirsch went on to explain:

> "Now do you understand. I've been setting this up for months -- ever since they arrested me. But I needed time to get everything done. Everything in order. That's why when they told me to tape you, I did it. Whatever they asked I did because I knew that once I was gone there'd be no case but I needed time."

Hirsch said that his apartment was on the market but it hadn't sold yet. At this meeting Hirsch told Weinig that his wife and children had their passports confiscated by the federal agents but that they had or were about to obtain Israeli passports in preparation for their departure. Weinig subsequently found independent corroboration documenting the fact that during November 1994 -- when Hirsch had agreed to plead guilty and face the prospect of imprisonment -- he was secretly making plans to open a law practice in Israel.

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15. We believe that despite having been a government informant for many months, Hirsch had not disclosed to the government the fact that he had surreptitiously removed and concealed $120,000 from one of his boxes of cash and $75,000 from a Venezia bag which Harvey brought to the office at Hirsch's request in the fall of 1994.

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On February 8; 1995 Weinig urged Hirsch not to leave the jurisdiction since his testimony at Weinig's trial concerning the gray market explanation for the cash transfers was crucial to Weinig's defense. Hirsch appeared to be swayed by Weinig's request. "Listen, I like what you're saying about me staying and testifying. I really don't want to go. But I need to talk to someone." On February 17, 1995 Weinig renewed his plea for Hirsch to remain in New York in order to be available to provide "testimony crucial to my defense".

Shortly thereafter, your office discovered that Mr. Hirsch had violated his agreements with the government, deceiving both assistants and agents, and blatantly engaging in additional laundering of drug monies. These discoveries prompted the government to revoke Hirsch's bail and he was incarcerated on or about June 1. At that time Hirsch told the government that he had had three meetings with Mr. Weinig. Hirsch did not disclose that there were actually eight meetings nor did he reveal the true nature or extent of those conversations, which the government only first learned from Mr. Weinig in the fall of 1995.

Notwithstanding this astounding duplicity and defrauding of your office, his deliberate resumption of drug money laundering activities, and his role as the instigator and prime mover in the original money laundering conspiracy, Hirsch received a three year sentence in stark contrast to the eleven year three month sentence imposed on Mr. Weinig.

Character

Although his participation in the money laundering and misprision activity was a serious mistake, Harvey Weinig has conducted many other aspects of his life with honor, integrity and significant concern and compassion for others. The letters sent to Judge Duffy on Mr. Weinig's behalf speak far more eloquently of his character than anything a lawyer can say.[16] It seems clear from these letters that Harvey has gone through life committing an enormous number of what Phyllis Applebaum calls "random acts of kindness".

---

16. Copies of these letters are collected alphabetically in the accompanying Appendix (Tab 10).

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Laura Blankfein, who has known Harvey for more than ten years, describes him as "one of those people....that friends and extended family always knew they could turn to for help." Her husband remembers:

> "years ago, when his [Harvey's] neighbor was having hard times, Harvey loaned him a five-figure sum that obviously would never be repaid. He gave money or legal services to babysitters, garage men, elevator operators and everyone who had sad tale and Harvey's ear. In short, Harvey was the 'softest touch' around. Particularly striking was the total absence of calculation; most of the people he helped could never be in a position to return the favor."

Associate Dean Susan Bryant, who has known Harvey for nineteen years, reports that his life has been spent "caring about people and doing the little acts that each of us can do, but often do not to make our friends' lives a little better. Harvey will willingly help people who ask for it; perhaps, more remarkably, he often senses that somebody needs help and offers without anybody asking." Ms. Bryant recounts an incident when her husband was trying a case out of town for eight months and their car was stolen. When the insurance company gave her the run-a-round, "Harvey took over without my asking and spent significant time dealing with the company to get me my money. He also went car shopping with me and negotiated a price for the new car. . . . More recently, because he was not working, he took Alison, our seventeen year old, to look at colleges and helped her work on her college essays." Ms. Bryant has "seen Harvey provide fatherly advice and support, jobs and homes for teenage kids without fathers," including providing "tuition for school for two other children, because he wanted them to have what his children had."

Former SEC attorney Paul Chernis recounts an instance where in order to help a friend resolve a serious financial problem with his prestigious British firm, Harvey agreed to allow the friend's employer to hold the stock certificate representing the Weinig's ownership of their Manhattan co-operative apartment. As soon as the British firm obtained

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the stock certificate, it fired Harvey's friend. Harvey asked Paul to represent him to try and get his apartment back. Paul notes:

> "the remarkable thing for me has always been Harvey's willingness to put his principal assets on the line for a friend. Harvey didn't think it was remarkable at all. I don't believe that I know any else who would have done that."

Tom Concannon, a Federal Defender in the Eastern District of New York who has known Harvey for almost 20 years, aptly describes Harvey as "the guy whose face is always there when someone has real trouble." Tom's 12 year old son Peter chimes in that Harvey "is a really good father. If one of his kids ever get's hurt, he will always drop whatever he is doing and go right to them to make sure they are okay."

Leonard Elman, a real estate attorney who became affiliated with Harvey's former firm, Berger, Steingut under difficult circumstances tells of how:

> "Harvey, whom I had not previously known, befriended me at every turn. Without being asked and certainly without compensation, Harvey became my friend, advocate, counselor and confident with respect to the controversies arising from the dissolution of my former firm and the end of the bank [Elman's most important client]. These were two situations which, I must say, caused me many sleepless nights, and it was only Harvey's wise counsel and effective advocacy which enabled me to withstand both onslaughts. Harvey didn't have to do this, he didn't even know me very well at the time. He received no material gain whatsoever. I am convinced he did what he did because he wished to protect and help me (Also because I think he believed there was merit to my positions.)....I wasn't the only person at Berger Steingut to whom Harvey exhibited kindness and consideration. I am certain that a number of the younger associates at the firm counted Harvey as a friend and as an interested mentor. He exhibited a great deal of loyalty to these young, and relatively young, people, both before Berger Steingut dissolved, and especially after it's dissolution, when he took several of them under his wing and into his new firm."

Michael Farkas, a certified public accountant who has known Harvey since they were neighbors in 1982, reports that "Harvey was not just the neighbor, not just a good

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friend, not just the person who my little daughter was so comfortable [with] that she could almost always be found at the Weinig's, he was a man who unsolicitedly helped me to stay alive and recoup from the darkest hour of my life." Farkas explains that in 1986 when he was a floor trader on two New York commodity exchanges and under enormous stress after having a substantial loss:

> "Harvey sensing that I was in a real bind offered me a loan of whatever I needed to get back on my feet to be paid back, with no concept of interest, when I could. It is hard to imagine a more appropriate analogy then the throwing of a life preserver to a drowning man. I believe that my borrowing from Harvey went up to about twenty thousand dollars. The entire loan was repaid by 1988. There is, however, no amount of repayment that would ever allow me to feel unobligated to Harvey for this gesture of kindness, faith and profound feeling for me and my family."

Sylvia Morey, a retired registered nurse and Harvey's mother-in-law, speaks of the enormous help Harvey provided to her and her husband before and during her husband's grave illness and heart surgery. After her husband died, Harvey "took charge of all my affairs. I don't believe I could have managed without him. He is indeed more than a son-in-law!"

Arlyne Myer, a single mother, who went to Harvey for legal advice found that she had a new friend as well as a new lawyer. After explaining her difficult financial situation arising from the fact that she was self-supporting and out of a job, she was surprised to receive a job offer two days later from someone who had gotten her name and phone number from Harvey Weinig.

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Fred Newman, who has known Harvey as a neighbor and friend for fifteen years, tells of the traumatic event in 1990 when he was suddenly fired from his position as general counsel for Phillip Morris after ten years with the company:

> "I tried to get my feet back on the ground and earn a living for my family but I was not successful in obtaining another permanent job. In the beginning of 1992 I hung out a shingle as a sole practitioner to practice law in New York City. As soon as Mr. Weinig heard that I had done that, he called me and volunteered to make office space available for me in his firm, Berger, Steingut, Tarnoff & Stern. Mr. Weinig arranged for me to have an office, rent free, for as long as I needed it. He also assigned his secretary to help me out whenever I needed it, and he made sure that the others in the office showed me similar courtesies....I emphasize that Mr. Weinig volunteered to make the office available to me and refused to accept any payment for the office while I was getting myself reestablished. I would not have been able to do it without his generosity. Although I had lived and worked in New York for over twenty years at that time, no one else offered to help."

Fred's wife Mary, confirms that "this was a gift of value beyond price, much needed, unsolicited and with no suggestion of obligation."

Daisy Pericon, Harvey's former housekeeper, speaks of how "Harvey gave me lots of help as a person and as a lawyer." Harvey handled both her divorce and house closing for no charge. More importantly

> "Alice and Harvey let me and my son live with them so that my son could go to a good school and be with me after school so I could watch him do his homework as I watched Jake and Sam. Harvey was like a second father for my son. I remember him talking to my son, helping him out with his homework. He took my son to baseball games together with his sons and he treated my son with the same way that he treated his sons....After I wanted to live in my own house and we moved out, my son continues to come to Harvey and Alice's house after school each day. Harvey always told me to treat my son and his sons the same."

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Ms. Pericon adds "I have seen many fathers with their sons. None pay as much attention as Harvey does....He is a special person."

Victor Quintano the doorman at Harvey's building reports that in the Spring of 1995 when he confided to Harvey that he had a financial problem, "despite Mr. Weinig being out of work, he gave me, with no hesitation, $120 which helped me considerably at the time. Mr. Weinig would not accept payment back, saying we will leave it as an early Christmas gift."

Martha Stark, an African American lawyer, who met Harvey four years ago, reports that she has "never in my life been made to feel so welcome by a person whom I perceive to be so different from me....He is one of the most genuine people I know." She accurately describes Harvey as someone who "in an unconditional and irrational way,...makes a lot of people feel like they are okay, in their job, in their life, in being who they are."

Professor Aaron Twerski from Brooklyn Law School, has known Harvey well since his days at Hofstra:

> "He has a sense of caring and sensitivity and a capacity to love that is awesome. All of us who have been touched by him know this in an unmistakable way....For me and for many others, Harvey was our Rabbi....Over the years Harvey reached out to help countless troubled teenagers through difficult periods of their lives. He paid tuition for them at private schools when they had special needs that could not otherwise be met. On several occasions he took out loans to do so. He opened his home to them and many of them stayed at his summer home so that he could help them with emotional support."

Jacclyn Weintraub was one of those teenagers who met Harvey in 1991 when she helped with the Weinig children that summer. This was "a pivotal time in my life when I desperately needed a father figure." The Weinigs were "willing to share anything they had with others." She tells how Harvey:

> "offered to have my twin sister come live with us when her living situation didn't seem workable. He would let me use the car to drive to Connecticut to see my grandfather who was ill.

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> He would invite me with them on family vacations. Ironically, Harvey was also instrumental in getting me part-time summer jobs in both the firms in which he worked while I was in college....Harvey is an exceptional man who is loved by all who know him. He has played a significant role in my life and will continue to do so."

Jonathan Weiss, the Director of Legal Services for the Elderly, "was surprised when he [Harvey] came to see me to volunteer to help us on our cases for the elderly poor....He explained that the publicity surrounding his arrest and indictment had effectively destroyed his law practice but he wanted to do something worthwhile, while awaiting the resolution of his case." Although Mr. Weiss was initially skeptical, he found that Harvey "had remarkable rapport with the clients, produced good solid legal work quickly, and was of considerable help to me in developing the facts." Mr. Weiss further notes that "it was clear to me that he got genuine fulfillment as a lawyer and had entered the profession with the appropriate ideals."

The fact is Harvey Weinig truly loved being a lawyer because he genuinely enjoyed helping other people. During his almost twenty years of practice Harvey Weinig devoted an extraordinary amount of his time to unheralded pro bono legal work for numerous people who needed help and couldn't afford legal fees.

Lorna Goodman notes "the innumerable letters and court appearances he made over many years on behalf of my immigrant babysitter, who was being evicted by her landlord . . . [and] his assistance to a frantic young boy arrested by the police for a traffic infraction." Former Assistant District Attorney Barry Birnbaum refers to "a gas station attendant in Port Washington, New York, named Billy Scagliano, who had fallen on difficult times and who Harvey represented in a variety of matters over the years without ever charging a fee." Baker & McKenzie's Charles Cummings speaks of "Harvey's use of his legal skill and training to help others without charge," including Harvey's pro bono assistance to Cummings' brother "whom he barely knew". Karen Sauvigne aptly describes Harvey as "a problem solver who often helps friends and neighbors with legal problems, including making court appearances on their behalf without accepting payments." Brooklyn

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Law Professor Aaron Twersky reports sending "numerous members of our community who had personal or business problems to Harvey. He never charged a nickel and gave them excellent and devoted representation." Larry Fox tells of Harvey making time "to assist my housekeeper to negotiate the terms of her house purchase, . . . [making] trips to Brooklyn to ensure that the home she was buying was properly inspected, prepared the bank financing papers, and closed on her home purchase without ever accepting any renumeration."

A particularly illuminating story of Harvey's pro bono work comes from Jennifer Wood, a Rhode Island attorney whose young niece had been twice kidnapped by "a very impaired alcoholic" mother. When the need arose for legal assistance in New York in connection with a related tort litigation, "every other lawyer we contacted in New York never got beyond the fact that my brother couldn't pay their requested retainer." One of Ms. Wood's partners who knew Harvey suggested that he "might be willing to review the pleadings and perhaps refer me to someone." "Horrified at the chaos that had been wreaked on a small infant by a destructive . . . parent," Harvey agreed to take on the litigation without charge, worked "tirelessly" on the case for years and in the end prevailed. Ms. Wood emphasizes that "this was a truly altruistic act on Harvey's part....[which] could not accrue to his personal, professional or financial interest." Ms. Wood concludes:

> "Although my niece will probably never know this . . ., it was Harvey Weinig, a man she has never met, who selflessly dedicated himself pro bono over a period of years, to protect her right to the childhood she has enjoyed and to protect her right to become the special person that she is. I don't live in New York and I don't know Harvey in other contexts - I will not overreach to speculate about why so many other people so clearly respect and admire this man. I do know that the lives of the entire family of one small child, strangers to this man, were inalterably changed by his simple act of kindness to us."

Family

Harvey Weinig's family situation is complicated. His mother, twice widowed, is extremely dependent. For many years she has had little income and has relied on Harvey for substantial financial assistance. Harvey's younger sister, who recently passed away, had

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been treated for substance abuse and had severe psychological problems. She too had been a beneficiary of Harvey's financial aid. As Phyliss Applebaum described it, "they asked, he gave." His mother continues to need his help.

According to close friend Larry Fox, Harvey's mother is someone who "is very dependant on him and he has over the years been responsible for taking care of the smallest details concerning her life, as she is simply not emotionally capable of caring for herself....when Harvey was trying to keep his life together following his arrest, his mother would call, frantic and worried, not only about Harvey's future but her own."

Paul Goldberger, the architecture correspondent with The New York Times, tells of an incident where "a crisis had arisen in the home of Harvey's sister. Without a moment's hesitation Harvey took charge, and left his own son's [birthday] party to assist her and to remove his nephew to his house. It was instantly clear that Harvey was the rock of reliability on which the stability of not only his immediate family depended but of his extended family as well."

Laura Blankfein reports that "since the death of Alice's father in 1986 Harvey has been the lynchpin of her family providing advice, comfort and at times financial support, to her mother and two sisters. When it became evident that Alice's niece, Kyra, a troubled child as a result of her parents divorce, needed a nurturing school environment, Harvey helped find and then pay for a private school education."

Harvey cares more about his immediate family, Alice, Jake and Sam than anything else on earth. Nina Finkelstein, a close friend of Alice's parents describes the Weinigs as "the most loving family I have ever known." In her view Harvey "reinvented" fatherhood. Sue Bryant observes that "Harvey would no doubt describe his most important role as father." Lucy Friedman, the Executive Director of Victims Services and a close friend, describes Harvey as "one of the most dedicated loving fathers that we know." Former Assistant U.S. Attorney Alan Cohen, a friend for more than five years, describes Harvey as "a devoted and caring father of two tremendous boys."

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Cynthia Hayes, an independent management consultant who has known Harvey for eight years, reports:

> "Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life. He structured his business so that he could come home early in the evenings, spending more time with his kids than the average professional. He has been very involved in their education, spending hours reading to the boys, helping with homework, participating in school events and generally conveying the idea that education was a wonderfully and valuable thing. He has done his best to foster their interests in sports (getting up at 4:00 a.m. to take Sam to hockey lessons), music, Hebrew school and other activities. Harvey has also taught the boys the importance of community and giving back to the world with the same generosity with which they have been blessed, helping Jake and Sam grow into the well rounded kids that they are."

Christina Musrey has some insight into why Harvey "is motivated by the desire to fulfill his role as father and provider for his family....[to the extent that] it is his life's work and everything else is secondary." Christina initially came to know the Weinig's as a babysitter, and later, during the summer of her sophomore year at Columbia College, they offered to let her live with them for free so she could experience the city and make some money waiting tables without the pressure of paying rent. She tells of how when she arrived for her first baby sitting assignment, Harvey's wife Alice was eager to get to her first movie in a long time while Harvey appeared reluctant to leave. Within half an hour, Harvey had returned (having left Alice in the movie theater) simply to be there with his then very young number one son.

After his arrest and even from jail Harvey has focused enormous efforts on supporting and comforting his wife and children who were devastated by the havoc he had introduced into their lives. Doctor Owen Lewis, a child psychiatrist associated with Columbia University, reports that Harvey's son Sam, age 9 is suffering from a major depressive disorder. This problem was apparently initiated by the trauma of his father's arrest and Sam's subsequent preoccupation with "the potential separation from and

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incarceration of his father." Dr. Lewis describes Harvey as "a mainstay of the boys stability." At my request, Dr. Lewis recently sent me an update on Sam's present condition:[17]

> The Post-Traumatic Stress Disorder has resolved. While his depression has improved, he is still receiving an antidepressant and has periods of depression marked by crying, pessimism, anxiety, and low self-esteem. His school work has suffered, and he has had to delete most of the additional activities he used to engage in because his basic daily schedule often depletes him. He has shown marked sensitivities with friends, and is sometimes ostracized because of this.
>
> His father had been a stalwart support for him. Needless to say, the boy misses his father terribly and has tried valiantly to face the unfathomable -- the return of his father more than a decade hence when the years of his childhood will have closed. Harvey Weinig's sentence is equally a sentence for his son. He will be marked by the harshness of his father's punishment for his entire life.
>
> If only for the sake of the mental health of his son, I urge you to try to find a way to mitigate Harvey Weinig's prison term. The boy's complete recovery depends upon it.

Conclusion

Harvey Weinig is a good man -- an exceptionally good man -- who engaged in criminal activity. Mr. Weinig's humanity does not excuse the offenses for which he stands convicted but it does place that conduct in the proper prospective of a man who, in many respects, has lived an exemplary life.

Harvey has already suffered enormous losses as a result of his criminal conduct. He has had to forfeit his lifetime profession -- a profession he truly loved and excelled at -- a profession from which he derived his livelihood as well as the satisfaction of helping people in need. He has been humiliated, shamed and vilified in the public press. He has lost his self-respect and permanently scarred an honorable reputation which he valued

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17. Dr. Lewis' February 24, 1997 letter is included in the Appendix (Tab 11).

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highly. He lives with the agony of having inflicted enormous suffering on Alice, Jake and Sam, the people he loves most, in addition to depriving them of the financial security that he considered so important to their well being.

The disparity between Mr. Weinig's eleven years imprisonment and the far lower sentences accorded to his many codefendants, is unconscionably unfair. Given all the facts in this unusual case, a government motion to reduce Mr. Weinig's sentence is truly warranted and is the best, if not the only, chance to insure that "justice shall be done."

This letter is already much too long and yet, in a sense, can never be long enough. Certain aspects of this matter, however, are best discussed in person, and I would greatly appreciate the opportunity to meet with you early next week for that purpose. My deepest thanks for your consideration of this letter.

Sincerely,

Rusty

John R. Wing

JRW:mat

Enclosure

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DOC # 211

United States Attorney
Southern District of New York

100 Church Street
New York, New York 10007

March 19, 1996

U.S. DISTRICT COURT FILED FEB 09 2001 S.D. OF N.Y.

BY HAND

Honorable Kevin T. Duffy
United States District Judge
Southern District of New York
United States Courthouse -- Room 1205
Foley Square
New York, New York 10007

United States v. Harvey Weinig, et al.
S1 94 Cr. 981 (KTD)

Your Honor:

The sentencing for defendant Harvey Weinig has been scheduled for Friday, March 22, 1996, at 9:30 a.m. In connection with the upcoming sentence, enclosed is a copy of a consensually tape-recorded conversation, numbered "J-15," between Harvey Weinig and Robert Hirsch and an accompanying transcript. This conversation was referred to in the Government's Memorandum In Response To Defendants' Pretrial Motions in the above-captioned case dated June 15, 1995, and accompanying Government Exhibits.

Respectfully submitted,

MARY JO WHITE
United States Attorney

By: _____
LEV L. DASSIN
Assistant United States Attorney
Telephone: (212) 791-1614

cc: John R. Wing
(By Fax and Overnight Mail)

EXHIBIT 6

TAPE NUMBER: J-15

DATE: November 15, 1994

TIME:

PARTICIPANTS: ROBERT HIRSCH
HARVEY WEINIG
LINDA WEBER

ABBREVIATIONS: UNINTELLIGIBLE (UI)
INAUDIBLE (IA)

LINDA WEBER (UI).

ROBERT HIRSCH Linda, where's Harv?

LINDA WEBER (UI).

HARVEY WEINIG Robert.

ROBERT HIRSCH Yah. Can I ask you a few things?

HARVEY WEINIG Yah. (UI) get my messages.

ROBERT HIRSCH What? Come on let's sit in this room. (UI).

HARVEY WEINIG Huh?

ROBERT HIRSCH Well, I, I, I don't know where thing's are at.

HARVEY WEINIG Well let me tell you.

ROBERT HIRSCH Well, where does that leave us? Nobody owes anybody anything?

HARVEY WEINIG No. (UI).

ROBERT HIRSCH Do I look nervous?

HARVEY WEINIG No. Menashe owes ...

ROBERT HIRSCH Three hundred thousand?

HARVEY WEINIG Yeah.

ROBERT HIRSCH Harvey, let me explain something to you.

HARVEY WEINIG Two hundred and ...

ROBERT HIRSCH Hold on. Stop right there. You should understand that, that, that when Menashe was

in my office, he explained to me his debt to Dick had been liquidated.

HARVEY WEINIG I don't necessarily believe Menashe.

ROBERT HIRSCH I don't necessarily believe either of them.

HARVEY WEINIG Right.

ROBERT HIRSCH But whatever business they have, we're not going to know about it and I don't care about it.

HARVEY WEINIG Right. Exactly. (UI).

ROBERT HIRSCH It Dick is not ...

HARVEY WEINIG It's over.

ROBERT HIRSCH You're sure of it.

HARVEY WEINIG It's over.

ROBERT HIRSCH Well ...

HARVEY WEINIG See, he's interested in seizure cases, and you know what, so am I.

ROBERT HIRSCH Yah, but.

HARVEY WEINIG Money. No one's looking for it.

ROBERT HIRSCH Yeah, but listen, you can't walk into a law firm and say I have four million dollars worth of seizure cases (UI), it's not like that.

HARVEY WEINIG Listen to me. I'm not clear that there's any special in future work.

ROBERT HIRSCH There isn't.

HARVEY WEINIG But if there is, should there be, he's a big scumbag.

ROBERT HIRSCH True.

HARVEY WEINIG Who abused (UI)

ROBERT HIRSCH True.

HARVEY WEINIG So let's just play it through. What I do what I do ...

ROBERT HIRSCH Let me ask you this then question ... if Dick is in charge of the seizure cases.

HARVEY WEINIG Are we all going to see the money? No.

ROBERT HIRSCH Perfect. So we write it off, that's done.

HARVEY WEINIG Maybe. But, on the other hand, do we want to control ...

ROBERT HIRSCH No.

HARVEY WEINIG ... those cases?

ROBERT HIRSCH No.

HARVEY WEINIG (UI) that we wanna ...

ROBERT HIRSCH I would like to, I would like to be able to answer and represent to Juliana, if it should it ever come up (UI) I can find out who's handling those cases but I don't really know.

HARVEY WEINIG Is that right? And you do ...

ROBERT HIRSCH I'd like to be able to say that.

HARVEY WEINIG And we do want to find out. And, and, and, I'll tell you something else. In my heart of heart's ...

ROBERT HIRSCH Um hum.

HARVEY WEINIG I think there must be a scumbag who wants those seizure cases.

ROBERT HIRSCH How are you going to control that person? (UI). Anyone walking through the door, if you're telling a story, right, just do the math here. I have four million dollars seized between Puerto Rico and Houston. The person will say: "Really?" What's that person gonna want to prosecute the case?

HARVEY WEINIG I'd stick to the hour.

ROBERT HIRSCH Right. Then, whatever is recovered whether by settlement or some other mechanism, if anything, Dick will pay. What (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH That's my opinion.

HARVEY WEINIG (UI). Because, you understand, Dick's smart. He knows (UI).

ROBERT HIRSCH Dick can find out.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG He wants (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI). It sounds like (UI).

HARVEY WEINIG (UI). I don't think he wants, he wants a separate (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI). He perceives there might be more money to be made moving forward than looking backward, and he is, is in my view right. (UI).

ROBERT HIRSCH Who's he?

HARVEY WEINIG (UI).

ROBERT HIRSCH Okay.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI). Today ... he might be getting his money from this guy Clooney (UI).

ROBERT HIRSCH Who's Clooney?

HARVEY WEINIG Clooney's the guy at Biltmore Mortgage that.

ROBERT HIRSCH Oh.

HARVEY WEINIG He's the president.

ROBERT HIRSCH He's supposed to get his money back, you mean?

HARVEY WEINIG (UI). You know what Dicky did?

ROBERT HIRSCH What?

HARVEY WEINIG Seized him.

ROBERT HIRSCH He seized a person? What? Come again?

HARVEY WEINIG He seized a person.

ROBERT HIRSCH He went and he picked up this person?

HARVEY WEINIG Well, not personally.

ROBERT HIRSCH He sent somebody. Did he hurt the person?

HARVEY WEINIG No. He's in protective custody.

ROBERT HIRSCH He learned it from the Colombians.

HARVEY WEINIG Yeah.

ROBERT HIRSCH He learned it from them?

HARVEY WEINIG Yeah.

ROBERT HIRSCH Heh, heh.

HARVEY WEINIG And he'll be released as soon as his family produces money and ... (UI)

ROBERT HIRSCH Wait a minute. Hold it, hold it. Dick Spence is holding someone hostage and you're sitting here?

HARVEY WEINIG You know what that's.

ROBERT HIRSCH That person's gonna call the police. Who needs that?

HARVEY WEINIG I mean (UI).

ROBERT HIRSCH Look, look.

HARVEY WEINIG (UI).

ROBERT HIRSCH He's holding a person and you really don't see any problem with that?

HARVEY WEINIG (UI) be arrested for this, for that, there'll jail, there'll be bail.

ROBERT HIRSCH He's gonna have another criminal problem with this, now.

HARVEY WEINIG (UI).

ROBERT HIRSCH Well that's (UI). If someone held you hostage, because (UI) would you call the Police and say.

HARVEY WEINIG Well, he's not in a position to call the Police at this point (UI), right?

ROBERT HIRSCH Right.

HARVEY WEINIG And when he's let go, will he want to call the Police and say "I was held hostage"?

ROBERT HIRSCH I don't know, I would think so.

HARVEY WEINIG Huh?

ROBERT HIRSCH Wouldn't you? Correct me if I'm wrong, this is generally not the way things get done.

HARVEY WEINIG (UI). He's also involved with a guy (UI) named Lou Alimena (UI) doesn't fucking matter to me (UI).

ROBERT HIRSCH (UI) he doesn't have anything bad against us. (UI).

HARVEY WEINIG (UI). Robert, what are you talking about, what's the difference.

ROBERT HIRSCH (UI).

HARVEY WEINIG He didn't, he didn't go through a close analysis on the numbers.

ROBERT HIRSCH No. I presume you gave it to him already though.

HARVEY WEINIG Yeah, yes.

ROBERT HIRSCH (UI).

HARVEY WEINIG I gave him the Colombian (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG Which was what we gave back. I told him you didn't (UI).

ROBERT HIRSCH (UI). This I don't understand (UI).

HARVEY WEINIG Here's his thing.

ROBERT HIRSCH (UI).

HARVEY WEINIG His thing is,

ROBERT HIRSCH (UI).

HARVEY WEINIG It's too symmetrical. I gave half a million (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI) six hundred and thirty thousand (UI) right here (UI).

HARVEY WEINIG Basically everything (UI). That's really the first point. The second point is.

ROBERT HIRSCH It can't be done?

HARVEY WEINIG It can't be done. That's number two. (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG You just don't, (UI) go into the bank and give your driver's license, you don't go into the bank.

ROBERT HIRSCH No, you don't do that when you're bringing in a million dollars.

HARVEY WEINIG (UI).

ROBERT HIRSCH Cause they'll ask you (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Well, let me suggest to you. How do you think Dick feels? (UI).

HARVEY WEINIG Absolutely (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI). The one point two was stolen.

ROBERT HIRSCH Fine, (UI) we can't tell him that.

HARVEY WEINIG No. (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG But, the reality is he knows now (UI). He also, oh, you know what else he picked up on? he picked up on (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Yeah.

HARVEY WEINIG Has a difference (UI) for it, you know like one's ...

ROBERT HIRSCH All of them.

HARVEY WEINIG For (UI), one's for Rivera, one is for so and so.

ROBERT HIRSCH Every one.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG Every account ...

ROBERT HIRSCH Is the same one.

HARVEY WEINIG Is the same one.

ROBERT HIRSCH I saw that.

HARVEY WEINIG (UI). If they were going to segregate it, they would segregate it into sub-accounts like (UI).

ROBERT HIRSCH Listen. They ..

HARVEY WEINIG You don't know ...

ROBERT HIRSCH (UI).

HARVEY WEINIG You don't know how the bank in Colombia works.

ROBERT HIRSCH No, I think I do know, and it goes something like this. You look, you know we made all the bank, all the transfers to, for, for Fred, we made to Banco del Colombia or Banco del Estado or whatever it was, right? The account number, you (UI) tell me that over the phone, remember what we were talking about over the phone, (UI). The beneficiary ...

HARVEY WEINIG Was different.

ROBERT HIRSCH Is different in every case.

HARVEY WEINIG But you see ...

ROBERT HIRSCH Whether, whether ...

HARVEY WEINIG (UI).

ROBERT HIRSCH Whether, whether ...

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH You understand?

HARVEY WEINIG (UI) sub-accounts. I, I, I think, I think he's right, I think there are sub-accounts, here's my cut. My cut is that in fact, these sub-accounts by name, not numbers, but the same primary account and ...

ROBERT HIRSCH And they're not numbered.

HARVEY WEINIG Yeah. They're ...

ROBERT HIRSCH Right, right.

HARVEY WEINIG It's, it's just, it's just, you know, (UI) Citibank ...

ROBERT HIRSCH Yeah.

HARVEY WEINIG Or Chemical bank. What they'll do is they'll have a main account and (UI) account and then

you just put, put (UI) in the account, (UI) sub-account ...

ROBERT HIRSCH And that's got a number.

HARVEY WEINIG (UI) and give a number. But here, they just give it a name. So what? So they got, you know, a couple (UI) less, less (UI), you know?

ROBERT HIRSCH (UI). Let's say a million dollars goes in tomorrow, let's say, uh. Let's say that these people need to do a million dollars worth of business tomorrow.

HARVEY WEINIG Yeah.

ROBERT HIRSCH And we have a mechanism to, to make that, let it, not make it happen, to let it happen.

HARVEY WEINIG Well we do.

ROBERT HIRSCH You gonna tell him?

HARVEY WEINIG (UI).

ROBERT HIRSCH Okay, good.

HARVEY WEINIG But, you want to know something, all of the things that you said rang true, and you know, and you know it ...

ROBERT HIRSCH Tell me, I forgot what it was.

HARVEY WEINIG (UI). What Fred is telling you, or Julianna, or, or Fred, is telling you basically, is that this is (UI) and we'll make it up after. You haven't really said that to me.

ROBERT HIRSCH Well, I don't thing it's exactly that.

HARVEY WEINIG Look, there are two things that I'm going to point out to you.

ROBERT HIRSCH They're in the midst of ...

HARVEY WEINIG Yeah, they're in, yeah, there, something big is going on.

ROBERT HIRSCH Right.

HARVEY WEINIG And we don't know what it is. But we do know Fred's in trouble.

ROBERT HIRSCH Yeah.

HARVEY WEINIG And we also know that he hasn't had business.

ROBERT HIRSCH That, that's true. There's a third, don't you think?

HARVEY WEINIG Which one is that?

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Yeah, yeah, he's got records, Harv. Why can't we see them?

HARVEY WEINIG Don't. He claims that (UI).

ROBERT HIRSCH Have you ever seen anything?

HARVEY WEINIG No.

ROBERT HIRSCH I have not either. Harvey, has Dick? If someone where to ask you to reconstruct what happened, or me, we couldn't begin to do that.

HARVEY WEINIG We can do it day by day and then (UI). You know, don't under, underestimate Dicky Spence.

ROBERT HIRSCH I don't.

HARVEY WEINIG You do.

ROBERT HIRSCH I underestimate him?

HARVEY WEINIG (UI).

ROBERT HIRSCH This much is clear: he's had a lot less trouble since September than I've had.

HARVEY WEINIG There's a story about a guy who's driving in his car and his tire goes flat. And so, he gets out and jacks up the car, do you know this story?

ROBERT HIRSCH No.

HARVEY WEINIG And, uh, takes off the four lug nuts, puts them in the hubcap and a car comes speeding down the highway and hits the, the, a, hubcap and the lug nuts go flying into the air and kill him. It happens to be opposite a mental institution, and one of those crazy people has been watching (UI) and, um, the crazy person says to them (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI) and he says, I may be crazy, but I'm not stupid.

ROBERT HIRSCH Yeah, I understand.

HARVEY WEINIG Dicky Spence may be crazy. (UI).

ROBERT HIRSCH Listen to what I said before. (UI).

HARVEY WEINIG (UI) very calm.

ROBERT HIRSCH Yeah. When Peter Thomes (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Right. (UI) account, alright. What did we get?

HARVEY WEINIG Six hundred.

ROBERT HIRSCH Not in an account, we got it in cash.

HARVEY WEINIG Alright, so we got six hundred in cash.

ROBERT HIRSCH (UI). He did that for a reason (UI). It was fully apparent don't you, you understand (UI). Don't you get it, we didn't get money that was in an account, we got money that was taken out of the bags, I told you I was there one night. You see waht I'm telling you?

HARVEY WEINIG Let's ...

ROBERT HIRSCH You understand that, right?

HARVEY WEINIG Let's do a check. Let's call the bank.

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH My, my guess.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG We're gonna call them right now.

ROBERT HIRSCH Yeah, but where (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI) because, I have two things (UI) today.

HARVEY WEINIG Let's call the bank, let's call the bank. April 19th was a Tuesday.

ROBERT HIRSCH Don't, check the balance, what you should really do is check the balance as of the following Friday, because that was ...

HARVEY WEINIG He might have been that he wired money out by then. I think that might be too late.

ROBERT HIRSCH But (UI), there wouldn't be (UI). Don't you see?

HARVEY WEINIG Okay, I'm going to get a balance as of April 22nd.

ROBERT HIRSCH Yeah.

HARVEY WEINIG And, the following Friday, you think?

ROBERT HIRSCH (UI). You understand what I'm ...

HARVEY WEINIG The end date was April 29th.

ROBERT HIRSCH (UI).

HARVEY WEINIG Yeah, I understand.

ROBERT HIRSCH The money we got never went into any account.

HARVEY WEINIG No.

ROBERT HIRSCH It never did.

HARVEY WEINIG No.

ROBERT HIRSCH I mean, you know that.

HARVEY WEINIG Yes, yes.

ROBERT HIRSCH So that if there was two point five million in the account ...

HARVEY WEINIG Where's our ...

ROBERT HIRSCH And another two ...

HARVEY WEINIG Yeah, where's our money?

ROBERT HIRSCH He did that for a reason. (UI) the account, not, not what we split.

HARVEY WEINIG Well, wait a minute. If we set, money sent by him ...

ROBERT HIRSCH Not hundreds of thousands.

HARVEY WEINIG Yes, hundreds of thousands of our money.

ROBERT HIRSCH Are you crazy?

HARVEY WEINIG Wired, there's a wire.

ROBERT HIRSCH Harv, we never got any wire of a hundred thousand dollars.

HARVEY WEINIG Yes.

ROBERT HIRSCH No.

HARVEY WEINIG Y o u ' r e w r o n g .

ROBERT HIRSCH I'm not, I'm not. The only wire that we tried to get was that two seventy five which took forever, when, you know (UI), when (UI) said it was one forty. If you look in April, and you look in, in, you will see that comes out to a hundred thousand dollars. That hardly amounts to two thirds of two and a half million.

HARVEY WEINIG (UI) not.

ROBERT HIRSCH My point is that Peter Thomes' math may not be so crazy, you understand what I'm saying?

HARVEY WEINIG I understand exactly what you're saying. If the difference is (UI), how much do you think he made on this whole deal?

ROBERT HIRSCH Whole deal, you mean from day one?

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI). I need to be educated, you know what I was trying to think of this, I don't know why, I was thinking about it, and I was thinking about how the last, end of September, eleven months unfolded. Here's my cut, and you may have a different recollection than I do, but it goes something like this. I don't know about any of this shit, we don't know, you don't know, we don't know from nothin'. October Alexander Schwartz comes in (UI).

ROBERT HIRSCH Sometime thereafter, it's not clear to me when, Dick Spence started serving as a helper to Alexander Schwartz going to various places. (UI).

HARVEY WEINIG He went down to Puerto Rico ...

ROBERT HIRSCH ... Went to Puerto Rico. As the investigator.

HARVEY WEINIG (UI)

ROBERT HIRSCH He did that. Okay. And at that point there was no formalized thing I mean we didn't know where Schwartz was (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Oh that was ... when he came to my house, was that ... we talked about that?

HARVEY WEINIG (UI).

ROBERT HIRSCH But we didn't really have one when he came to the house. You were talking about how stupid Schwartz was doing and all of that ...

HARVEY WEINIG Yeah but at that meeting (UI).

ROBERT HIRSCH What was it?

HARVEY WEINIG A third, a third, a third.

ROBERT HIRSCH ... of what though? We didn't even know what he was getting.

HARVEY WEINIG Of anything Dick came in ...

ROBERT HIRSCH But we didn't even know what Schwartz was giving him at that time.

HARVEY WEINIG No, no, but we knew waht (UI) as.

ROBERT HIRSCH Going to pick up.

HARVEY WEINIG As going to pick up. And he paid Schwartz (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG And (UI) sending the money out.

ROBERT HIRSCH Right.

HARVEY WEINIG So he picked up the money (UI) you know (UI).

ROBERT HIRSCH The next time.

HARVEY WEINIG The next time (UI).

ROBERT HIRSCH But he doesn't really takeover the whole business like with the banking and all of that until like January. As I recall. Because we had to ...

HARVEY WEINIG No. He was (UI) the pickups

ROBERT HIRSCH Even at even at the time of these seizures ... Schwartz is there with Bruno (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Right that's the best time.

HARVEY WEINIG (UI).

ROBERT HIRSCH But after that ...

HARVEY WEINIG (UI).

ROBERT HIRSCH I (UI) at the airport. He met Chaim at the airport.

HARVEY WEINIG (UI).

ROBERT HIRSCH And I picked him up and Dick Spence and then we went to Chaim's place. That was in January.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI) in January 1994, he has already Transglobal ... and we never know what's going on ...

(Phone rings)

ROBERT HIRSCH (UI) (on phone) yes. You mean (UI).

HARVEY WEINIG Yes.

ROBERT HIRSCH Yes. Hold on. Do you have to hang up?

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

(Phone rings)

HARVEY WEINIG Yes. (Pause) (Aside) That's okay you can, you can call me at the office. (UI) you know why don't (UI). Okay. I'll send you, I'll send you (UI) tomorrow okay. Bye.

(Hangs up phone).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH In January ... right after the Houston seizures ... I'm talking to (UI) about the problem. At that point Dick had Transglobal then he starts doing everything himself. We don't really know at any given time how much money is in Transglobal or leaving Transglobal. In fact ... the reason (UI). We don't know what's going in and out of Transglobal at all okay. All we know I mean it's a big fact that we wind up knowing that a certain date in April there's 2.4 or 2.5, whatever figure you want to choose, in the account.

UNIDENTIFIED FEMALE (UI)

ROBERT HIRSCH No. 2.4 or 2.5 in the account ... right?

HARVEY WEINIG Right.

ROBERT HIRSCH And that is divied up ... a third, a third, a third, supposedly, but even as you know ... (UI). Where's all the other money?

HARVEY WEINIG How can we find out.

ROBERT HIRSCH It requires two things. It requires knowing what was in the bank (UI). We check the bank balance (UI) it should be close to 3 million dollars in the bank.

HARVEY WEINIG (UI) 16th of January.

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Of January.

HARVEY WEINIG Yeah, but I think ... that you saw Chaim? I (UI).

ROBERT HIRSCH Yeah.

HARVEY WEINIG (UI).

ROBERT HIRSCH That I remember.

HARVEY WEINIG (UI).

ROBERT HIRSCH No we, we ...

HARVEY WEINIG (UI).

ROBERT HIRSCH ... we had remember.

HARVEY WEINIG (UI).

ROBERT HIRSCH That was Schwartz's legal fees. Remember you said wait till Monday and I said no I have to go out to Borough Park. (UI).

HARVEY WEINIG At that point which is mid January.

ROBERT HIRSCH ... We don't have anybody.

HARVEY WEINIG We don't have anything.

ROBERT HIRSCH Anything. The first we get (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Let me tell you (UI). It was (UI) . When I went to see Dick in (UI) I gave you one.

HARVEY WEINIG Right one thousand ... that was (UI) 21st.

ROBERT HIRSCH Right.

HARVEY WEINIG (UI).

ROBERT HIRSCH One thousand dollars.

HARVEY WEINIG (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG (UI).

ROBERT HIRSCH You're right ... that's the end of January ... and no transfers.

HARVEY WEINIG (UI).

ROBERT HIRSCH By (UI).

HARVEY WEINIG That's terrible.

ROBERT HIRSCH You, you remember it's been (UI). I'm gonna tell you something right now, what we basically get ... is we got to split the cash that he (UI) in those last few weeks of April after we've decided, you know ... (UI).

HARVEY WEINIG So we've gotta balance those numbers. We got one box of 50 ...

ROBERT HIRSCH (UI).

HARVEY WEINIG That was the Timberland box that was (UI) you're first trip up there.

ROBERT HIRSCH First trip where?

HARVEY WEINIG (UI).

ROBERT HIRSCH But that was (UI) late ...

HARVEY WEINIG (UI) it was probably February.

ROBERT HIRSCH (UI) in February. (UI) a thousand dollars you know (UI). This is what happened ... First there was (UI), then there was ... a rapid succession of those boxes ... right? And the one bag right?

HARVEY WEINIG Correct. Look (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG I'm telling you now, there was 50 ...

ROBERT HIRSCH There was 200.

HARVEY WEINIG A box of 50, there was a box of 200 there was ostensibly a box of 300, there was a box of 130 (UI).

ROBERT HIRSCH Loose change of 40 or 50.

HARVEY WEINIG (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG 176, 170, 470, 670, 720 ...

ROBERT HIRSCH And I always (UI) tell you how there's 2 million dollars ... right? (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Right. That doesn't take into account ... What was the activity ... from December?

HARVEY WEINIG (UI).

ROBERT HIRSCH And ... and it doesn't take into account what was actually there on April 20, on April 19th. Now remember (UI) this is this means (UI) confrontation.

HARVEY WEINIG (UI).

ROBERT HIRSCH You understand because when you know (UI) what went on ... you gotta see what happens when you had you're surgery, one thousand dollars was a meaningful sum. Because I went to his office for whatever the reason was and he threw me a pack with (UI) of 2 thousand. Exactly what happened.

HARVEY WEINIG We always had trouble after (UI).

ROBERT HIRSCH Yeah always had trouble.

HARVEY WEINIG (UI).

ROBERT HIRSCH And we had to ...

HARVEY WEINIG (UI).

ROBERT HIRSCH Right.

HARVEY WEINIG (UI). This and that ...

ROBERT HIRSCH Yeah, it's the only way I got your money. It was always difficult to get it from him.

HARVEY WEINIG (UI).

ROBERT HIRSCH The only time it wasn't ... yes ... the only time it wasn't difficult is when we arranged the hit ...

HARVEY WEINIG Or (UI) ...

ROBERT HIRSCH Even then ... remember you said you said ...

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG The only thing that we got (UI) we probably got maybe 50,000 more in legal fees.

ROBERT HIRSCH Yes. (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH Yeah 275 that's true. That, however, (UI) 150 is (UI) thousand ... right? ... is not two thirds of 3 million.

HARVEY WEINIG We have 2 million dollars ...

ROBERT HIRSCH Total.

HARVEY WEINIG Total.

ROBERT HIRSCH No.

HARVEY WEINIG No? (UI).

ROBERT HIRSCH Yes (UI) right two million dollars total in all the different ways.

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG We should've gotten 4 million. We're 2 million out.

ROBERT HIRSCH Yes.

HARVEY WEINIG (UI).

ROBERT HIRSCH A million dollars is a lot of money.

HARVEY WEINIG Two million dollars.

ROBERT HIRSCH Not from him.

HARVEY WEINIG Yeah.

ROBERT HIRSCH (UI) ... our business and this business with him is now over. He's happy, we're happy ...

HARVEY WEINIG (UI).

ROBERT HIRSCH What do you mean?

HARVEY WEINIG (UI).

ROBERT HIRSCH Yeah.

HARVEY WEINIG (UI). [Knocking Sound]

ROBERT HIRSCH (UI). Oh no, maybe he (UI).

HARVEY WEINIG This is why. (UI). Look, we'll never get to Menashe's money.

ROBERT HIRSCH We're not looking to get Menashe's money. You know how much ...

HARVEY WEINIG (UI).

ROBERT HIRSCH Take a look at what the people there (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH That (UI) [Knocking Sound] You know I mean everytime you say something (UI). I I can't think that 2 million dollars without even

factoring in Menashe ... is whatever explanation he gives for Diego isn't clear (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH (UI). conversation that I had with Diego is not the only one he had. I think he basically said he did a job for him. Didn't he?

HARVEY WEINIG (UI).

ROBERT HIRSCH And here's another thing [Knocking Sound] that I would highly recommend against. I would highly recommend against him talking to total strangers over the phone about, how to handle my end. This to me is uncalled for. I don't know what he's doing it for. It seems to me ... that he's been doing some level of business with the local people (UI).

(Pause)

HARVEY WEINIG You have to understand (UI). People are going foreward (UI). The reality is ... The reality is it's over with he knows. (UI) kidnapping (UI).

ROBERT HIRSCH (UI). I don't read this ... you are much more closer that I am ...

HARVEY WEINIG (UI).

ROBERT HIRSCH ... and I don't believe it's a wonderful thing that he should get pinched on a kidnapping charge.

HARVEY WEINIG He's going to get indicted (UI) to get a lawyer. To give him extra money.

ROBERT HIRSCH Yeah, yeah.

HARVEY WEINIG He'll get convicted, he'll get a, you know, suspenced sentence, (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG (UI). For what?

ROBERT HIRSCH Did you ever ascertain why he's (UI)?

HARVEY WEINIG (UI).

ROBERT HIRSCH Did you tell him I'm not ... he knows I'm not home.

HARVEY WEINIG (UI) ... that um ... (UI).

ROBERT HIRSCH (UI).

ROBERT HIRSCH (UI).

HARVEY WEINIG He's going back to Florida Thursday.

ROBERT HIRSCH (UI).

HARVEY WEINIG No, he basically wants ... two hundred and seventy seven thousand (UI).

ROBERT HIRSCH If he was not (UI) what do you mean?

HARVEY WEINIG (UI).

ROBERT HIRSCH No.

HARVEY WEINIG It's possible but I don't believe that (UI).

ROBERT HIRSCH What comes out (UI) at the meeting if I'm guaging him correctly (UI).

HARVEY WEINIG (UI).

ROBERT HIRSCH He will?

HARVEY WEINIG (UI) ... My, my picture of Dick is ... he's got too much (SLAPPING SOUND) drive (UI) you know?

ROBERT HIRSCH Yeah correct.

HARVEY WEINIG (UI).

ROBERT HIRSCH What else is there left for us to explain to him?

HARVEY WEINIG Nothing (UI) 'cause I feel you're right (UI). I (UI) we have to make a (UI) on what to do with that.

ROBERT HIRSCH For reasons ... that ... (UI) I don't want anyone coming for us. (UI). The fact that he gave us all the information (UI) you understand? And I and I don't want anyone to ask me five months down the road what (UI) you know what I mean? I would like (UI).

HARVEY WEINIG (UI). I'm not gonna get (UI) anybody who I don't trust.

ROBERT HIRSCH Then why don't you ...

HARVEY WEINIG And anybody who I did get we're in ... we're gonna have to control. Robert ...

ROBERT HIRSCH Yeah, but if you choose one of his people ...

HARVEY WEINIG Here's my thing ... I'm gonna take a look (UI) and I have ways of finding out also.

ROBERT HIRSCH You should find out ...

HARVEY WEINIG (UI) And ... (UI) but I'm not going out (UI) if there's money to be made. But I think if we can get (UI) and I (UI) you knew I (UI).

ROBERT HIRSCH Yes, yeah (UI).

HARVEY WEINIG How about (UI)?

ROBERT HIRSCH I like him alot, he's very effective. I don't like this story that he needs to hear.

HARVEY WEINIG (UI)

ROBERT HIRSCH Especially if that owner is going to be arrested for kidnapping ... I tell you, I ... you know what I'm saying ...

HARVEY WEINIG It's a bad fact.

ROBERT HIRSCH We don't need that.

HARVEY WEINIG It's a bad fact, I mean ... I don't know. You know he's kidnapping someone who owes him money here ...

ROBERT HIRSCH That was you know ... that was just my initial thought.

HARVEY WEINIG (UI)

ROBERT HIRSCH (UI)

HARVEY WEINIG It's not drug money, it's money. He's lost some good money.

ROBERT HIRSCH Yeah.

(End of Conversation)

Approved: LEV L. DASSIN and MARK F. GOODMAN
Assistant United States Attorneys

Before: HONORABLE SHARON E. GRUBIN
United States Magistrate Judge
Southern District of New York

94 MAG. 2586

- x - FILED UNDER SEAL

UNITED STATES OF AMERICA	:	COMPLAINT
-v-	:	Violations of 18 U.S.C. §§ 1956, 1001, 1343 and 1503
RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie,"	:	
HARVEY WEINIG, a/k/a "The Wing,"	:	
CHAIM HERMAN,	:	
TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee,"	:	
JUAN GUILLERMO OCAMPO, a/k/a "Paul,"	:	
LEON SHULUM WEINMANN,	:	COUNTIES OF OFFENSE: NEW YORK COUNTY, BRONX COUNTY and Elsewhere
RACHEL WEINMANN,	:	
MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred,"	:	
AMPARO HURTADO VALENCIA, a/k/a "Helen,"	:	
JULIANA LNU, a/k/a "Bonnie,"	:	
CARLOS LOPEZ,	:	
MICHAEL T. KALANZ, a/k/a "Mike the Cop,"	:	
GARY SALERNO,	:	
CHARLES BRUNO,	:	
ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg,"	:	
DANIEL CARROLL	:	
JOSE E. TANON,	:	
DONALD J. HAYDEN,	:	
LATCHEZAR CHRISTOV, a/k/a "Lucky,"	:	
ROBERT JANZ,	:	
MENASHE LEIFER,	:	
(caption continued on next page)	:	

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PENGAD-Bayonne, N. J.
EXHIBIT
7

SYLVIA EZELL, and :
PATRICIA DILLUVIO,
a/k/a "Patty," :

Defendants. :
- x

SOUTHERN DISTRICT OF NEW YORK, ss.:

JEFFREY DRUBNER, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

Count One

Conspiracy To Launder Narcotics Proceeds

1. From in or about 1991 up to and including the date of this Complaint, in the Southern District of New York and elsewhere, RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "The Wing," CHAIM HERMAN, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, MICHAEL T. KALANZ, a/k/a "Mike the Cop," GARY SALERNO, CHARLES BRUNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DANIEL CARROLL, JOSE E. TANON, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," ROBERT JANZ, MENASHE LEIFER, SYLVIA EZELL, and PATRICIA DILLUVIO, a/k/a "Patty," the defendants, and others known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1956(a)(1)(B)(i), 1956(a)(2)(B)(i) and 1957 of Title 18, United States Code.

2. It was an object of the conspiracy that RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "The Wing," CHAIM HERMAN, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, MICHAEL T. KALANZ, a/k/a "Mike the Cop," GARY SALERNO, CHARLES BRUNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DANIEL CARROLL, JOSE E. TANON, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," ROBERT JANZ, MENASHE LEIFER, SYLVIA EZELL, and PATRICIA DILLUVIO, a/k/a "Patty," the defendants, and others known and unknown, knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, unlawfully, wilfully and knowingly would and did conduct and attempt to conduct such financial transactions which

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in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18, United States Code.

3. It was a further object of the conspiracy that RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "The Wing," CHAIM HERMAN, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, MICHAEL T. KALANZ, a/k/a "Mike the Cop," GARY SALERNO, CHARLES BRUNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DANIEL CARROLL, JOSE E. TANON, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," ROBERT JANZ, MENASHE LEIFER, SYLVIA EZELL, and PATRICIA DILLUVIO, a/k/a "Patty," the defendants, and others known and unknown, unlawfully, wilfully and knowingly would and did transport, transmit and transfer funds from a place in the United States to and through a place outside the United States, knowing that the funds involved in the transportation, transmission and transfer represented the proceeds of some form of unlawful activity, and knowing that such transportation, transmission and transfer was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(2)(B)(i) of Title 18, United States Code.

4. It was a further object of the conspiracy that RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "The Wing," CHAIM HERMAN, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, MICHAEL T. KALANZ, a/k/a "Mike the Cop," GARY SALERNO, CHARLES BRUNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DANIEL CARROLL, JOSE E. TANON, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," ROBERT JANZ, MENASHE LEIFER, SYLVIA EZELL, and PATRICIA DILLUVIO, a/k/a "Patty," the defendants, and others known and unknown, unlawfully, wilfully and knowingly would and did engage and attempt to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from specified unlawful activity, to wit, narcotics trafficking, in violation of Section 1957 of Title 18, United States Code.

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Overt Acts

5. In furtherance of said conspiracy and to effect the objects thereof, the defendants and others known and unknown, committed the following overt acts in the Southern District of New York and elsewhere:

a. On or about October 6, 1993, ALEXANDER SCHWARTZ picked up bundles of United States currency totalling approximately $267,830 in Puerto Rico, which was subsequently seized by the Drug Enforcement Administration ("DEA").

b. On or about January 5, 1994, CHARLES BRUNO picked up bundles of United States currency totalling approximately $1,054,210 in Houston, Texas, which was subsequently seized by the DEA.

c. On or about January 6, 1994, ALEXANDER SCHWARTZ possessed bundles of United States currency totalling approximately $802,893 that he had picked up in Houston, Texas, which currency was subsequently seized by the DEA.

d. On or about January 14, 1994, GARY SALERNO picked up bundles of United States currency totalling approximately $676,392 in Houston, Texas, which was subsequently seized by the DEA.

e. From on or about January 31, 1994, through on or about February 2, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, CHAIM HERMAN, TORMES PETER and Robert Hirsch met in Zurich, Switzerland.

f. On or about March 24, 1994, RICHARD SPENCE, HARVEY WEINIG and Robert Hirsch caused a claim of ownership to be filed with the DEA concerning $676,392 that had been seized from GARY SALERNO in Houston, Texas.

g. On or about April 12, 1994, JOSE E. TANON met with Wayne Rodriguez in the vicinity of 121st Street and Madison Avenue, New York, New York.

h. On or about April 19, 1994, RICHARD SPENCE, HARVEY WEINIG and Robert Hirsch stole in excess of $2.5 million in narcotics proceeds that they had collected in connection with the Organization's money laundering activities.

i. On or about April 19, 1994, RICHARD SPENCE, HARVEY WEINIG and Robert Hirsch fabricated a document which purported to be an indictment in which SPENCE was charged with violating federal law.

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j. On or about April 19, 1994, RICHARD SPENCE, HARVEY WEINIG and Robert Hirsch fabricated a document which purported to describe the seizure by law enforcement officials of the monies they had stolen.

k. On or about May 17, 1994, DANIEL CARROLL and RICHARD SPENCE engaged in a telephone conversation during which they discussed, among other things, CARROLL's possession of bundles of United States currency in his home and the use a motor home to deliver money as a means of avoiding a search by law enforcement.

l. On or about May 25, 1994, RICHARD SPENCE engaged in a telephone conversation with Robert Hirsch during which they discussed, among other things, whether funds could be transferred from one bank account to another without the source of the funds being traced.

m. On or about May 25, 1994, RICHARD SPENCE and PATRICIA DILLUVIO engaged in a telephone conversation during which they discussed transferring money between accounts without it being traced and SPENCE giving DILLUVIO a gift rather than sending her somewhere.

n. On or about June 2, 1994, RICHARD SPENCE and LATCHEZAR CHRISTOV engaged in a telephone conversation during which CHRISTOV said, among other things, that he and DONALD J. HAYDEN had looked at the money, which was comprised of "fives, tens, twenties and even ones."

o. On or about June 2, 1994, RICHARD SPENCE and MENASHE LEIFER engaged in a telephone conversation during which, among other things, RICHARD SPENCE gave MENASHE LEIFER his personal bank account number and told LEIFER that CHAIM HERMAN was unhappy because he was being pushed out.

p. On or about June 3, 1994, MICHAEL T. KALANZ engaged in a telephone conversation with RICHARD SPENCE during which they discussed, among other things, whether KALANZ could store bags in his New York City Police Department ("NYCPD") locker.

q. On or about June 3, 1994, MICHAEL T. KALANZ, carried a large black bag into the NYCPD's 48th Precinct building in the Bronx.

r. On or about June 6, 1994, MICHAEL T. KALANZ carried a large paisley bag into the NYCPD's 48th Precinct building in the Bronx.

s. On or about June 7, 1994, MICHAEL T. KALANZ carried a large black bag and a large paisley bag from the

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NYCPD's 48th Precinct building in the Bronx to a Citibank branch located on Morris Park Avenue in the Bronx (the "Morris Park Citibank").

t. On or about June 20, 1994, RICHARD SPENCE and Jane Doe No. 1 engaged in a telephone conversation during which they discussed, among other things, that GARY SALERNO had brought a box to SPENCE's business located at 431 East 165th Street, Bronx, New York ("431 East 165th Street") and that ROBERT JANZ had another $100,000.

u. On or about June 20, 1994, SYLVIA EZELL and ROBERT JANZ brought a package from 431 East 165th Street to the Morris Park Citibank.

v. On or about June 22, 1994, Robert Hirsch engaged in a telephone conversation concerning the pick-up of approximately $850,000 in United States currency in Miami, Florida.

w. On or about June 23, 1994, RICHARD SPENCE met with a confidential informant in the parking lot of a Burger King Restaurant in Florida where SPENCE exchanged his Mercedes Benz for a rental car that the confidential informant said contained $425,000 in its trunk.

x. On or about June 23, 1994, RICHARD SPENCE told DEA agents that he obtained $425,000 from a Hasidic Jewish businessman at a nearby Condominium Complex, and that he handled a lot of cash in his business.

y. On or about July 8, 1994, JOSE E. TANON sent packages via Federal Express from Montreal, Canada to 431 East 165th Street.

z. On or about July 13, 1994, DANIEL CARROLL travelled to Puerto Rico.

aa. On or about July 14, 1994, RICHARD SPENCE and Robert Hirsch engaged in a conversation during which they discussed, among other things, that DANIEL CARROLL had picked up $1 million..

ab. On or about July 15, 1994, HARVEY WEINIG engaged in a telephone conversation with Robert Hirsch during which they discussed, among other things, an earlier telephone conversation with a bank concerning federal wire transfer numbers, and the fact that TOHMES PETER needed $1 million.

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ac. In or about July 1994, RICHARD SPENCE assisted by Robert Hirsch, provided false and fabricated information by telephone and facsimile machine to Allstate Insurance Company offices located in Fort Myers, Florida.

ad. On or about July 18, 1994, DONALD J. HAYDEN and RICHARD SPENCE engaged in a telephone conversation during which they discussed, among other things, how SPENCE was stopped by the Police in Miami with "merchandise" in the car.

ae. On or about July 29, 1994, MICHAEL T. KALANZ and RICHARD SPENCE engaged in a telephone conversation during which KALANZ told SPENCE, among other things, that he was being watched by "the Feds."

af. On or about August 15, 1994, RICHARD SPENCE and Robert Hirsch engaged in a telephone conversation during which they discussed the fact that GARY SALERNO would conduct a pick up of United States currency later that day.

ag. On or about August 15, 1994, GARY SALERNO picked up a bag and put it in his car in the vicinity of One West 28th Street, New York, New York.

ah. On or about September 3, 1994, RICHARD SPENCE and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, the fact that GARY SALERNO was ready to pick-up United States currency later that day.

ai. On or about September 3, 1994, GARY SALERNO picked up a bag and put it in the trunk of his car in the vicinity of 53rd Street and Eighth Avenue in Manhattan.

aj. On or about September 7, 1994, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that money had been wired to one of the WEINMANNs.

ak. On or about September 14, 1994, AMPARO HURTADO VALENCIA and Robert Hirsch engaged in a telephone conversation during which VALENCIA said, among other things, that she was powerful in Colombia and threatened to send people to harm Hirsch.

al. On or about September 14, 1994, MIGUEL OMAR GARRABITO BOTERO, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, sending money to BOTERO.

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am. On or about September 20, 1994, HARVEY WEINIG gave Robert Hirsch a cardboard box containing bundles of cash totalling approximately $200,000.

an. On or about September 29, 1994, CHAIM HERMAN and Robert Hirsch engaged in a telephone conversation during which HERMAN said, among other things, that he had done eleven "containers" before he began to work with RICHARD SPENCE and Hirsch.

ao. On or about September 29, 1994, JULIANA LNU and Robert Hirsch engaged in a telephone conversation during which JULIANA LNU said, among other things, that MIGUEL OMAR GARRABITO BOTERO was the principal in Colombia and that BOTERO was the only person who could kill Hirsch.

(Title 18, United States Code, Section 1956(h).)

Counts Two Through Fourteen

Laundering Narcotics Proceeds

6. From on or about January 5, 1994 through on or about September 2, 1994, in the Southern District of New York and elsewhere, defendant RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," and others, knowing that property involved in certain financial transactions represented the proceeds of some form of unlawful activity, to wit, narcotics trafficking, unlawfully, willfully, and knowingly, did conduct and attempt to conduct such financial transactions, to wit, receipt of cash on the dates and in the approximate amounts set forth below, which cash was in fact the proceeds of illegal narcotics trafficking, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of such specified unlawful activity:

COUNT	APPROXIMATE DATE CASH RECEIVED	APPROXIMATE AMOUNT OF CASH
2	January 4, 1994	$ 1,054,210
3	January 6, 1994	$ 802,893
4	January 14, 1994	$ 676,392
5	April 12, 1994	$ 100,000
6	May 17, 1994	$ 800,000
7	June 2, 1994	$ 250,000

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8	June 6, 1994	$ 700,000
9	June 8, 1994	$ 1,100,000
10	June 20, 1994	$ 294,000
11	July 1, 1994	$ 800,000
12	July 13, 1994	$ 1,000,000
13	August 15, 1994	$ 1,000,000
14	September 3, 1994	$ 765,000

(Title 18, United States Code, Sections 1956(a)(1)(B)(i), and 2).

Count Fifteen

False Statement

7. On or about March 24, 1994, in the Southern District of New York and elsewhere, RICHARD SPENCE and HARVEY WEINIG, the defendants, in a matter within the jurisdiction of the DEA, a department and agency of the United States, unlawfully, willfully and knowingly did falsify, conceal and cover up by trick, scheme, and device a material fact and did make a false, fictitious and fraudulent statement and representation, to wit, RICHARD SPENCE, HARVEY WEINIG and Robert Hirsch caused a claim of ownership to be filed with the DEA concerning the seizure of $676,392 in narcotics proceeds from Gary Salerno by the DEA in Houston, Texas, in which they claimed, among other false statements, that the money was owned by Spence and that it represented "a portion of the proceeds due to [Spence] for a sale of precious stones and metals acquired and sold overseas."

(Title 18, United States Code, Sections 1001 and 2.)

Count Sixteen

Wire Fraud

8. From in or about July through in or about August 1994, in the Southern District of New York, RICHARD SPENCE, the defendant, unlawfully, willfully and knowingly did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and did transmit and cause to be transmitted by means of a wire in interstate commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, to wit, RICHARD

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SPENCE, the defendant, used a facsimile machine in interstate commerce to knowingly submit a false and fabricated insurance claim concerning a Mercedes Benz automobile to an Office of the Allstate Insurance Company located in Fort Myers, Florida.

(Title 18, United States Code, Sections 1343 and 2.)

Count Seventeen

Obstruction of Justice

9. On or about July 29, 1994, in the Southern District of New York, MICHAEL T. KALANZ, the defendant, endeavored to corruptly influence, obstruct, and impede, and did influence, obstruct, and impede, the due administration of justice, to wit, MICHAEL T. KALANZ, the defendant, a Police Officer employed by the New York City Police Department, informed RICHARD SPENCE that he and SPENCE were the subjects of an ongoing federal investigation.

(Title 18, United States Code, Sections 1503 and 2.)

10. The bases for my knowledge and the foregoing charges are, in part, set forth in my Affidavit of dated November 29, 1994, which is attached hereto and is fully incorporated by reference herein.

WHEREFORE, deponent prays that warrants issue for the arrest of the above-named defendants so that they may be arrested and detained or bailed as the case may be.

JEFFREY DRUENER
Special Agent
Federal Bureau of Investigation

Sworn to before me this
29th day of November, 1994

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

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AFFIDAVIT OF SPECIAL AGENT JEFFREY DRUBNER

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

IN RE APPLICATION FOR ARREST :
AND SEARCH WARRANTS. : AFFIDAVIT

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JEFFREY DRUBNER, being duly sworn, deposes and says:

Introduction

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), and am currently assigned to the New York Field Division. I have been employed by the FBI for approximately 4 years, during which time I have participated in numerous investigations and arrests relating to money laundering and narcotics violations. As a result of those experiences, as well as my training, I have become familiar with the means by which narcotics traffickers launder the proceeds of their illegal activities.

2. Since in or about February 1994, the FBI, the Drug Enforcement Administration ("DEA") and the New York City Police Department ("NYCPD") jointly have been investigating, among others, RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "the Wing," Robert Hirsch and CHAIM HERMAN, in connection with their participation in a substantial international money laundering organization (the "Organization") which has laundered tens of millions of dollars in narcotics proceeds in the United States. I have been one of the case agents assigned to this investigation since its inception, and I make this affidavit in support of an application by the United States of America for warrants authorizing: (i) the arrest of defendants named in the attached complaint (the "Complaint"), and (ii) the search of certain premises described below.

3. The information set forth in this affidavit results from, among other sources, the use of undercover agents, discussions with reliable informants, physical surveillance, review of FBI, DEA and NYCPD reports, business records and publicly filed documents, and analysis of court authorized pen register and contemporaneous billing orders. In addition, the FBI, DEA and NYCPD have reviewed numerous consensually recorded conversations, and have monitored and recorded thousands of telephone conversations involving the named defendants, pursuant to a series of eight court-authorized wiretaps which commenced on or about May 10, 1994.

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4. To the extent that summaries and excerpts of either telephone calls intercepted pursuant to a court order or consensually monitored conversations are included below, they are based on tape recordings of the intercepted conversations, preliminary transcriptions of those conversations,[1] and notes taken by agents monitoring the wiretap. As is frequently the case when criminal coconspirators discuss their unlawful conduct over the telephone, the defendants frequently used code words and allusions during their conversations in an attempt to disguise the illicit content of those conversations. For example, many of the defendants used the term "paper," to refer to currency, and the term "container" to refer to units of $1 million dollars. In the summaries of conversations that follow, words enclosed in square brackets indicate my own inferences and conclusions based on my training and experience in this and other money laundering investigations, on conversations I have had with other experienced law enforcement officers, and on the context of each intercepted conversation. Because many of the codes used by the defendants and their co-conspirators are repeated, I have not provided bracketed explanation for every coded reference.[2]

5. What follows is a chronological description of certain evidence of the Organization's activities from in or about October 1993 through in or about November 1994. This description is set forth solely for the purposes of this application and is by no means exhaustive. Where I assert that a statement or observation was made, I did not personally hear the statement or make the observation unless specifically so stated. Instead, the information was provided by another law enforcement officer, either verbally or in writing, who had direct or indirect knowledge of the statement or observation.

Overview of the Organization

6. The Organization is comprised of over thirty members based in various cities around the world including but not limited to Mulheim, Germany, Zurich, Switzerland, Cali, Colombia, Los Angeles, California, and New York, New York, and has been responsible for laundering tens of millions of dollars

---

[1] In some cases, these preliminary transcriptions include draft translations of conversations conducted in whole or in part in Hebrew, German, and Spanish.

[2] Although the contemporaneous notes of the monitoring agents differ, in some cases, from the preliminary transcriptions and translations, based on my review of the recordings from the wiretap, my review of the recordings of consensually monitored telephone calls, and on conversations I have had with other law enforcement agents familiar with the contents of the these tapes, I believe the following summaries and excerpts to be accurate.

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in narcotics proceeds. To date, the Government has seized approximately $4,984,064 in narcotics proceeds from members of the Organization. RICHARD SPENCE, a/k/a "Dick," HARVEY WEINIG, a/k/a "the Wing," Robert Hirsch and CHAIM HERMAN are based in New York City and have been responsible for the pickup, transportation and laundering of narcotics proceeds generated in the United States, Canada and Puerto Rico.

7. In addition to Hirsch and WEINIG, who are practicing lawyers in New York City and are the principals of the New York law firm Hirsch Weinig, SPENCE, a retired New York City Fire Department ("NYCFD") fireman and successful businessman, and OCAMPO, a Colombian national who previously worked for the Organization in Germany and who was convicted of narcotics trafficking in the United States in the 1980s, the Organization is comprised of, among others, a stock-broker, an Honorary Consul from the Republic of Bulgaria, an NYCPD police officer, a NYCFD fireman, a management-level employee of Citibank, a hospital administrator working in New York City, and a Rabbi living and working in New York City.

8. The Organization has been laundering narcotics proceeds in the United States for at least two years. Typically, a member of the Organization is contacted by narcotics traffickers or their representatives who arrange to drop-off a sum certain in narcotics proceeds ranging from tens of thousands to hundreds of thousands of dollars on the street or in a hotel room in a particular city. A member of the Organization is then dispatched to obtain the proceeds and, if the pickup occurs outside New York City, to return them to New York City. Narcotics proceeds that are picked up in New York City or are returned to New York City from elsewhere are then turned over to one of the Organization's New York principals, who has the money counted and deposited into a bank account from which it is then transferred by wire or otherwise to Europe or elsewhere.

9. Although this paradigm appears to consistently have been followed by the Organization during the course of the conspiracy, the Organization's specific methods and personnel have changed during the past two years. For example, during the Organization's early money laundering activities in the United States, CHAIM HERMAN was primarily responsible for picking up money to be laundered in the United States, Puerto Rico and Canada and transferring it to LEON SHULUM WEINMANN and RACHEL WEINMANN (the "WEINMANNs") in Zurich, Switzerland. Later, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," or JUAN GUILLERMO OCAMPO, a/k/a "Paul," began to contact SPENCE and eventually Hirsch when there was cash to be picked up in the United States, Puerto Rico, or Canada. After PETER and OCAMPO began to contact Hirsch as their primary contact in the United States, Hirsch would contact SPENCE, who would arrange for the cash to be picked up and brought back to him in New York.

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Couriers dispatched by SPENCE would pick up bundles of United States currency in suitcases or boxes and transport them back to SPENCE's place of business. If the pickup was made outside of New York, a courier dispatched by SPENCE would either personally carry the money back to New York City, or send the money to New York via overnight mail services such as Federal Express. Once the Organization received the cash at SPENCE's place of business, SPENCE would then arrange, through one or more corrupt bank employees, for the cash to be deposited into bank accounts, including accounts controlled by SPENCE, as well as WEINIG and Hirsch. For a certain period of time, SPENCE, WEINIG and/or Hirsch would then arrange for the money to be transferred by wire to the WEINMANNs in Zurich, Switzerland, or to one of several other accounts. The WEINMANNs would then remit the funds to bank accounts designated by the Organization's customers.

Defendants and Offenses

10. On the basis of the facts set forth herein, I respectfully submit that there exists probable cause to believe that:

a. Defendants RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," HARVEY WEINIG, a/k/a "The Wing," CHAIM HERMAN, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, MICHAEL T. KALANZ, a/k/a "Mike the Cop," GARY SALERNO, CHARLES BRUNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DANIEL CARROLL, JOSE E. TANON, DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," ROBERT JANZ, MENASHE LEIFER, SYLVIA EZELL, and PATRICIA DILLUVIO, a/k/a "Patty," have violated Title 18, United States Code, Section 1956 and 1957.

b. Defendants RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," and HARVEY WEINIG, a/k/a "The Wing," have violated Title 18, United States Code, Section 1001.

c. Defendants RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," has violated Title 18, United States Code, Section 1343.

d. Defendant MICHAEL T. KALANZ, a/k/a "Mike the Cop," has violated Title 18, United States Code, Section 1503.

Arrest Warrant Application

11. On the basis of the information set forth herein, the Government hereby respectfully requests warrants authorizing the arrest of the following defendants:

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The Leaders of the Organization in the United States

a. RICHARD SPENCE, a/k/a "Dick," a/k/a "Charlie," age 37, resided at 12-29 Estates Lane, Queens, New York until August 1994. He currently resides at 9811 Leeward Court, Fort Myers, Florida. SPENCE is one of the leaders of the Organization and is primarily responsible for organizing money pickups, depositing large sums of cash into bank accounts without raising suspicion, and transferring that cash to various accounts via wire transfers. SPENCE, a former fireman employed by the NYCFD, operates several businesses at 431 East 165th Street, Bronx, New York ("431 East 165th Street"), including a trucking company, a beer distributorship, and a home oil and heating company. This location is used in part by the Organization to further, and to conceal, its illegal activities. SPENCE has no known criminal record.

b. HARVEY WEINIG, a/k/a "The Wing," age 46, resides at 110 Riverside Drive, New York in Manhattan. WEINIG, is a lawyer licensed to practice in the State of New York and is one of the name-partners of Hirsch Weinig, a 10-lawyer firm located at 1540 Broadway (Suite 29-A), New York, New York. The Hirsch Weinig law firm is used in part by the Organization to facilitate and conceal its illegal activities. Indeed, WEINIG, who is one of the leaders of the Organization, operates primarily out of his offices at Hirsch Weinig in New York, from which he engages in banking transactions on behalf of the organization and consults with SPENCE and Robert Hirsch about the Organization's activities. Hirsch, the other name-partner of Hirsch Weinig, is also a lawyer licensed to practice in the State of New York. Hirsch too operates primarily from Hirsch Weinig in New York, where he helps coordinate the Organization's money laundering activities with SPENCE in New York, and with PETER, OCAMPO, and the WEINMANNs in Europe.

c. CHAIM HERMAN, age 36, resides at 1526 41st Street, Brooklyn, New York. HERMAN, at one time, was primarily responsible for all cash pickups in the United States and for transferring cash from the United States to the WEINMANNs in Switzerland. HERMAN later worked with SPENCE laundering money on behalf of the Organization.

The Leaders of the Organization in Europe

d. TOHMIS PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," age 47, resides in Mulheim, Germany, where he used to live with JUAN GUILLERMO OCAMPO. PETER worked with OCAMPO, the WEINMANNs, and others in Europe, and was in constant communication with Hirsch and with the Organization's clients up until the time he began to receive threats because of his failure to remit payments entrusted to him to launder.

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e. JUAN GUILLERMO OCAMPO, a/k/a "Paul," age 35, OCAMPO is one of the Organization's leading members who resides in and operates out of Mulheim, Germany. Before his recent arrest in Colombia on or about September 29, 1994, OCAMPO was in constant communication with Hirsch and with the Organization's clients. In or about September 1982, OCAMPO was convicted in New York State Court of criminal sale of a controlled substance, and was sentenced to a term of imprisonment of 5 years to life. OCAMPO was released on parole in or about May 1987.

f. LEON SHULUM WEINMANN resides in Zurich, Switzerland. Mr. WEINMANN receives cash and wire transfers in Zurich, Switzerland on behalf of the Organization and remits them to bank accounts designated by the Organization's customers.

g. RACHEL WEINMANN, who is the wife of LEON SHULUM WEINMANN, also resides in Zurich, Switzerland. Ms. WEINMANN works with Mr. WEINMANN to receive cash and wire transfers in Zurich, Switzerland on behalf of the Organization and remit them to bank accounts designated by the Organization's customers.

The leaders of the Organization in Colombia

h. MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," resides in Colombia and is believed to be associated with the Cali cocaine cartel.

i. AMPARO HURTADO VALENCIA, a/k/a "Helen," resides in Colombia and is believed to be associated with the Cali cocaine cartel.

j. JULIANA LNU, a/k/a "Bonnie," resides in Colombia and is believed to be associated with the Cali cocaine cartel.

k. CARLOS LOPEZ, resides in Colombia and is believed to be associated with the Cali cocaine cartel.

Couriers and other Key Members of the Organization

l. MICHAEL T. KALANZ, a/k/a "Mike the Cop," age 30, resides at 234 Old Sylvan Lake Rd., Hopewell Junction, New York. KALANZ, who acts as a courier for the Organization, is a Police Officer with the NYCPD, Shield Number 16330, and is assigned to the 48th Precinct in the Bronx. KALANZ, among other things, is responsible for counting and storing substantial amounts of United States currency and transporting it to banks on behalf of the Organization. KALANZ has stored hundreds of thousands in United States currency in his locker at the 48th Precinct.

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m. GARY SALERNO, age 34, resides at 207-19 Melissa Court, first floor apartment, Queens, New York. SALERNO is one of the Organization's couriers, who picks-up and transports the proceeds of narcotics trafficking for the Organization. In addition, SALERNO acts as an enforcer for the Organization, intimidating and collecting money from various individuals. SALERNO is employed as a Hospital Administrator in the Bronx. On or about July 21, 1994, SALERNO was arrested by the NYCPD and charged with two felonies, extortion involving physical injury and attempted grand larceny. This State prosecution is currently pending. On or about November 16, 1994, SALERNO was arrested on a Complaint filed in the Eastern District of New York, United States v. Candella, et al., 94 Mag. Dkt. No. 1790, charging him with a conspiracy to traffick in firearms in violation of Title 18, United States Code, Sections 371 and 922(g). On that same day, a search of SALERNO's residence revealed that he possessed what appears to be a "hitman's kit," consisting of a garrotte -- which is a device used to strangle and sever the vocal chords of its intended victim -- three pairs of handcuffs, ammunition, and a law enforcement badge bearing someone else's name. In addition, a handgun, two rifles, ammunition, and a bugging device, among other things, were recovered in the search.

n. CHARLES BRUNO, age 38, resides at 9 Peachtree Lane, Hicksville, New York. BRUNO, who acts as a courier for the Organization, is a fireman with the New York City Fire Department, and is currently assigned to Engine Company 307, Hook and Ladder Company number 154, located on Northern Boulevard in Queens, New York.

o. ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," age 29, is a British citizen who until recently resided in Brooklyn, New York. SCHWARTZ, who purports to be a Rabbi, acts as a courier for the Organization.

p. DANIEL CARROLL, age 42, resides at 32-03 150th Street, Queens, New York. CARROLL, who is one of SPENCE's most trusted couriers, travels to various cities in the United States and abroad to pick up money for the Organization and return with it to New York City.

q. JOSE E. TANON, age 30, resides at 2764 Morris Avenue, Bronx, New York. TANON is a courier for the Organization, and works for SPENCE at 431 East 165th Street.

r. DONALD J. HAYDEN, age 59, resides at 3412 Oceanfront Walk, Marina Del Rey, California. HAYDEN receives large quantities of cash at his office at Laidlaw Equities located at 100 Wilshire Boulevard, Suite 1620, Santa Monica, California, which HAYDEN then ships via Federal Express to SPENCE in New York. According to the National Association of Securities

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Dealers, HAYDEN is a registered representative for Laidlaw Equities, which is a full service brokerage firm that obtains private funds and invests in commodities.

s. LATCHEZAR CHRISTOV, a/k/a "Lucky," age 57, resides at 607 Skyline Trail, Topanga Canyon, California. According to the National Association of Securities Dealers, CHRISTOV is also a registered representative for Laidlaw Equities with HAYDEN. CHRISTOV works with HAYDEN receiving cash and shipping it to SPENCE. CHRISTOV is also Honorary Consul General for the Republic of Bulgaria, and was accredited by the Bulgarian Government to this position on or about October 1, 1993.[3]

t. ROBERT JANZ, a/k/a "Bobby," age 36, resides at 72-33 61st St., Glendale, New York. JANZ often brings cash that has been received and counted by the Organization to a bank for deposit and sometimes acts as a courier for the Organization. JANZ works as a dispatcher for SPENCE at 431 East 165th Street.

u. MENASHE LEIFER, age 33, resides at 1364 57th Street, First Floor Apartment, Brooklyn, New York. LEIFER, who is purportedly a Rabbi, usually works with SPENCE and HERMAN, and performs various tasks in furtherance of the Organization's money laundering activities.

v. SYLVIA EZELL, age 40, resides at 1562 Bogart Avenue, Bronx, New York. EZELL, who works as a secretary for SPENCE at 431 East 165th Street, makes arrangements on behalf of the Organization to pick up, transport, and wire-transfer the proceeds of illegal narcotics trafficking.

w. PATRICIA DILLUVIO, age 28, resides at 1122 Rhinelander Avenue, Bronx, New York. DILLUVIO works as an Assistant Branch Manager for Citibank at the 1010 Morris Park Avenue, Bronx, New York branch (the "Morris Park Citibank"), where she accepts large sums of cash brought by other members of

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[3] I have been informed by FBI Special Agent Jackie Felton that she confirmed in writing with an employee of the Department of State, Office of Protocol, that CHRISTOV's position is categorized as a part-time employee of the Republic of Bulgaria. The State Department employee also provided Special Agent Felton with a booklet entitled "PERSONAL RIGHTS AND IMMUNITIES OF FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL." The booklet states that "Honorary consular officers in the United States have personal inviolability only in connection with official acts and enjoy only the more restricted form of official acts immunity accorded U.S. nationals or permanent residents, and immunity from the obligation to provide evidence as witnesses only in respect of official acts."

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the Organization and transfers the funds through various accounts on behalf of the Organization.

Southern District of New York Search Warrant Application

12. On the basis of the information set forth herein, the Government hereby respectfully requests warrants authorizing the search of the following premises located in the Southern District of New York:

a. 431 East 165th Street is an office and warehouse facility from which SPENCE operates several of his allegedly legitimate businesses. Court authorized wiretaps, confidential source information and surveillance of 431 East 165th Street have revealed that many members of the Organization work and spend a substantial amount of time at this location engaging in money laundering-related activities, both in person and by telephone. In addition, there is probable cause to believe SPENCE maintains banking records at this location that are relevant to this investigation. The Government requests a warrant to search these premises for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendants SPENCE, TANON, JANZ and EZELL, and including Paragraphs 11(a), (q), (t), (v), 51, 60, 63, 66, 69, 72, 75-76, 78-81, 96, 102, 104-105, 113, 121, 134, 136, 165-166, 198 and 207).

b. 1540 Broadway (Suite 29-A), New York, New York ("1540 Broadway, Suite 29-A") is commercial space leased by the Hirsch Weinig law firm. Court authorized wiretaps, confidential source information and surveillance of 1540 Broadway, Suite 29-A have revealed that WEINIG and Hirsch engage in substantial money laundering-related activities at this location both in person and by telephone, and maintain records of those activities at this location. The Government requests a warrant to search these premises for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendant WEINIG and including Paragraphs 123, 142-143, 159, 161, 169, 174, 185, 194, 207 and 213).

c. 110 Riverside Drive, Apartment No. A-5-F, New York, New York ("110 Riverside Drive"). 110 Riverside Drive is a sixteen story, doorman building located on Riverside Drive between 83rd and 84th Streets, and contains HARVEY WEINIG's primary residence. Public utility and New York Department of Motor Vehicles records and surveillance confirm that 110 Riverside Drive is HARVEY WEINIG'S residence. Additionally, consensually monitored conversations and confidential source information reveal that WEINIG stores illicit proceeds of his money laundering activities at 110 Riverside Drive. The Government requests a warrant to search 110 Riverside Drive for all of the items listed in Paragraph 210 below. (See Paragraphs

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referenced in Defendant Index for defendant WEINIG and including Paragraph 199 and 207).

d. A Locker assigned to MICHAEL T. KALANZ in the locker room in the basement of the 48th Police Precinct building, 450 Cross Bronx Expressway, Bronx, New York (the "Locker"). On or about November 28, 1994, a police official inside the 48th Police Precinct building, 450 Cross Bronx Expressway, Bronx, New York, whose duties include maintaining the records of locker assignments advised that KALANZ is currently assigned the Locker, which is located in the basement locker room of the 48th Precinct building. According to a map drawn by the police official, the Locker is located in the section of lockers opposite the lounge and bathroom, three rows of lockers from the back wall, towards the center isle of the locker room. The Locker is grayish green with a silver handle and a padlock, and is approximately six to seven feet tall, two feet wide and two feet deep. (An official in the 48th Precinct building will assist agents conducting the search to ensure that they locate the Locker). Court authorized wiretaps and surveillance reveals that KALANZ stores bundles of United States currency in the Locker for the Organization, and that KALANZ also works at 431 East 165th Street on behalf of the Organization. The Government requests a warrant to search the locker for the items referred to in Paragraph 206 below. (See Paragraphs referenced in Defendant Index for defendant KALANZ and including Paragraphs 63, 68-70, 134, 206 and 207).

e. The desk used by PATRICIA DILLUVIO at the Citibank branch located at the Morris Park Citibank ("The Desk"). The Desk is located on the ground floor of the Morris Park Citibank, and has a placard with her name on it. Court authorized wiretaps and surveillance reveals that couriers for the Organization brought DILLUVIO bundles of United States currency at the Morris Park Citibank. The Government requests a warrant to search The Desk for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendant DILLUVIO and including Paragraphs 53, 57, 67, 70, 77-78, 137, 149, 164, 184).

Eastern District of New York Search Warrant Application

13. On the basis of the information set forth herein, the Government hereby respectfully requests warrants authorizing the search of the following premises located in the Eastern District of New York:

a. A private house located 100 feet south of Montauk Highway on Meeting House Lane, Long Island, New York, including any wells on the property ("Meeting House Lane"). Meeting House Lane is a two story single family house with a porch and surrounded by a white picket fence, which is used by HARVEY WEINIG as a country house. Confidential source

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information has revealed that WEINIG stores illicit proceeds of his money laundering activities at Meeting House Lane. The Government requests a warrant to search Meeting House Lane for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendant WEINIG and including Paragraph 207 and 208).

b. 32-03 150th Street, Queens, New York, ("32-03 150th Street") is a two story single family residence located on the South-East corner of 32nd Avenue and 150th Street, and is DANIEL CARROLL's primary residence. Public utility and real estate records as well as surveillance conducted at this location confirm that DANIEL CARROLL resides at 32-03 150th Street. The Government requests a warrant to search 32-03 150th Street for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendant CARROLL and including Paragraph 46 and 207).

Middle District of Florida Search Warrant Application

14. On the basis of the information set forth herein, the Government hereby respectfully requests warrants authorizing the search of the following premises located in the Southern District of Florida:

a. 9811 Leeward Court, Fort Myers, Florida ("9811 Leeward Court") is a single family stucco house and is RICHARD SPENCE's primary residence. Southern Bell Telephone Company records reveal that the telephone number registered to 9811 Leeward Court is subscribed to in the name RICHARD SPENCE. In addition, on or about September 22, 1994, agents acting in an undercover capacity met with SPENCE inside 9811 Leeward Court, Fort Myers, Florida, where they discussed one of SPENCE's money laundering transactions. The Government requests a warrant to search 9811 Leeward Court for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendant SPENCE and including Paragraphs 136, 198 and 207).

Central District of California Search Warrant Application

15. On the basis of the information set forth herein, the Government hereby respectfully requests warrants authorizing the search of the following premises located in the Central District of California:

a. 100 Wilshire Boulevard, Suite 1620, Santa Monica, California (100 Wilshire Boulevard") is an office building containing approximately 60 offices. Suite 1620, which is located on the 16th floor, contains the offices of Laidlaw Equities and Consul to the Republic of Bulgaria. Wiretap interceptions and surveillance have revealed that DONALD J.

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HAYDEN and LATCHEZAR CHRISTOV, a/k/a "Lucky," work out of Suite 1620, have engaged in numerous money laundering-related telephone conversations from Suite 1620, and have received deliveries of United States currency at this location. The Government requests a warrant to search 100 Wilshire Boulevard for all of the items listed in Paragraph 210 below. (See Paragraphs referenced in Defendant Index for defendants HAYDEN and CHRISTOV and including Paragraphs 56 and 58).

There Is Probable Cause To Believe That The Defendants Have Violated, And Are Violating, The Federal Money Laundering Laws

The Organization's Activities From October 1993 Through April 1994

16. From at least in or about 1991 through the date of the filing of this Complaint, the Organization has picked up large quantities of cash in various cities throughout the United States, Puerto Rico, Canada, and Europe. On several occasions, the Organization's couriers have been stopped by law enforcement and the money they were carrying has been seized. For example, as discussed more fully below, in 1993 and 1994, couriers in possession of substantial amounts of United States currency were arrested in San Juan, Puerto Rico and Houston, Texas. In addition, certain members of the Organization stole money they were supposed to launder on behalf of the Organization and fabricated documents to make it appear as if the money had been seized by the Government. Partially as a result of the seizures, both actual and fabricated, certain members of the Organization met to discuss, among other things, how to avoid future seizures.

17. Despite efforts by the Organization to avoid detection by law enforcement, not only were couriers for the Organization arrested with large quantities of cash, but law enforcement was able to, among other things, conduct surveillance of the Organization's illegal conduct and intercept conversations pursuant to court authorized wiretaps during which narcotics traffickers arranged for the Organization to launder their narcotics proceeds, and discussed their use of the Organization to launder those proceeds.

SCHWARTZ is stopped in San Juan, Puerto Rico with $267,830.

18. From on or about October 3, 1993 through on or about October 6, 1993, SCHWARTZ was registered as a guest at the Sands Hotel in Isla Verde, Carolina, Puerto Rico, (the "Sands Hotel") under the name "Mr. R. Rosenbaum."

19. On or about October 6, 1993, at approximately 6:55 a.m., SCHWARTZ was stopped at an American Airlines security

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checkpoint in the Luis Munoz Martin International Airport in Carolina, Puerto Rico. SCHWARTZ was scheduled to depart Puerto Rico on a 7:00 a.m. flight to New York City. While passing through airport security, SCHWARTZ's chest appeared to have an irregular shape, and an X-ray of SCHWARTZ's carry on luggage revealed a suspicious package. When asked about the irregular shape of his chest and the contents of his carry on luggage, SCHWARTZ said that he was carrying cash under his clothing and in his luggage. A consent search of SCHWARTZ's person revealed that he was wearing a money vest filled with United States currency. A consent search of SCHWARTZ's carry on baggage revealed bundles of United States currency wrapped inside newspaper and packaged in a plastic bag, three empty money vests, and rubber bands. In addition, a narcotics sniffing dog indicated the presence of narcotics on the United States currency seized from SCHWARTZ, which totalled approximately $267,830. This money is currently the subject of a forfeiture proceeding in Puerto Rico.

20. On or about October 6, 1993, when asked by DEA agents about the source of the money, SCHWARTZ stated in substance that he was given the money in New York City on or about October 3, 1993 by a person whom he could not describe, and that he had subsequently brought the money from New York to Puerto Rico for the purpose of purchasing diamonds and rubies. SCHWARTZ said that he could not identify the person who was going to bring the diamonds and rubies to SCHWARTZ, and that the person whom he could not identify had failed to meet SCHWARTZ in Puerto Rico as planned.

21. On or about October 16, 1993, SPENCE travelled to Puerto Rico and registered as a guest at the Sands Hotel. While at the hotel, SPENCE presented a Sands Hotel claim check to a hotel employee and asked the employee to investigate the whereabouts of a suitcase left behind by "Mr. R. Rosenbaum," which was the alias used by SCHWARTZ when he had stayed at the Sands Hotel. SPENCE purported to be a friend of Mr. Rosenbaum, and said that he was investigating the matter for the Hirsch Weinig law firm. SPENCE explained that Mr. Rosenbaum had been at the Sands Hotel to conduct a diamond transaction that did not occur. According to SPENCE, Mr. Rosenbaum took half of the money for the transaction, approximately $250,000, to the airport with him when he checked out of the hotel, but had inadvertently left approximately $260,000 in a suitcase at the Sands Hotel claim check area. SPENCE explained that the $250,000 that Mr. Rosenbaum took to the airport had been seized by the DEA, but that Hirsch Weinig subsequently had the money returned. SPENCE said that he had come to Puerto Rico to retrieve the other half. On or about October 17, 1994, after failing to obtain the suitcase, SPENCE checked out of the Sands Hotel and returned to New York.

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22. On or about November 4, 1993, the Hirsch Weinig law firm filed a civil complaint in the Eastern District of New York against the Sands Hotel on behalf of SCHWARTZ claiming that on or about October 6, 1993, SCHWARTZ had left a suitcase containing $260,000 with the Sands Hotel and that the Sands Hotel either willfully or negligently allowed someone else to take it. Subsequently, on or about February 14, 1994, SPENCE, WEINIG and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that, among other things, the $267,830 seized from "Rabbi" ALEXANDER SCHWARTZ by the DEA on or about October 6, 1993, belonged to him and represented the proceeds of payment "for a sale of precious stones by me acquired and sold overseas. Rabbi Schwartz was engaged by me to deliver this payment to me." SPENCE further swore that the transaction that "was the subject of the seized payment in this matter could be typical of scores, indeed hundreds of daily transactions on 47th Street in New York City."

BRUNO and SCHWARTZ are stopped in Houston, Texas with $1,054,210 and $802,893, respectively.

23. From on or about January 4, 1994 through on or about January 6, 1994, SCHWARTZ was registered in Room 371 at the Doubletree Hotel in Houston, Texas ("Room 371"). On or about January 4, 1994, at approximately 3:10 p.m., agents conducting surveillance saw SCHWARTZ remove two weighted cardboard boxes from the trunk of car and carry them into the Doubletree Hotel, return to the car, and then carry two more weighted cardboard boxes into the Doubletree Hotel.

24. On or about January 6, 1994, at approximately 5:50 p.m., agents conducting surveillance observed BRUNO enter Room 371 with three suitcases. At approximately 6:10 p.m., agents observed SCHWARTZ and BRUNO leave Room 371 with four suitcases and a backpack and proceed to the Houston International Airport. BRUNO checked three of the four suitcases for a 6:55 p.m. flight to New York City, and SCHWARTZ returned to the Doubletree Hotel with the fourth suitcase. After being approached by DEA agents, BRUNO voluntarily agreed to answer questions about the three suitcases he had checked, consented to a search of three suitcases, and provided agents with a key that opened the suitcases. A search of the suitcases revealed that they contained bundles of United States currency totalling approximately $1,053,200. In addition, each of the three seized suitcases had address tags bearing the words "Spence, Bayside, New York."[4] A consent search of the backpack also revealed $1,010 in United States currency within a white envelope.

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[4] As set forth above, in January 1994, SPENCE resided at 12-29 Estates Lane, Queens, New York, which is located in the Bayside section of Queens.

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25. After CHARLES BRUNO was arrested and advised of his constitutional rights, BRUNO told agents, in substance and in part, that he had travelled to Houston to pick up money for SPENCE. BRUNO further stated that when he had asked SPENCE what the money was for, SPENCE had explained that the money was proceeds from settlement fees among lawyers and that BRUNO's conduct would be legal. SPENCE had instructed BRUNO to buy three suitcases and then pick up the money from an individual known as "Rosenberg" [SCHWARTZ] who would meet BRUNO in Room 371. Pursuant to SPENCE's instructions, BRUNO met with an individual who identified himself as Rosenberg in Room 371. There, BRUNO and Rosenberg emptied about four or five cardboard boxes containing bundles of cash and loaded the cash into four suitcases, including the three suitcases BRUNO had purchased that day. Rosenberg gave BRUNO an envelope containing cash and instructed BRUNO to give the envelope containing the cash to SPENCE's associate who would be picking up BRUNO at the airport in New York. SPENCE had agreed to pay BRUNO $1,000 for making the pick-up and delivery. BRUNO also stated, in substance and in part, that on one previous occasion, he had travelled to Puerto Rico to pick up cash for SPENCE at SPENCE's request. BRUNO was released and no charges were filed regarding the above-described events.

26. Subsequently, on or about July 13, 1994, SPENCE, WEINIG and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that the $1,053,200 seized from CHARLES BRUNO by the DEA on January 5, 1994 was SPENCE's money and that "Mr. Bruno was carrying these funds as expense money for the business trip for which I engaged him." In addition, on or about July 13, 1994, SPENCE, WEINIG and Hirsch filed another claim of ownership with the DEA in which SPENCE swore that the $1,010 seized from BRUNO by the DEA on or about January 5, 1994, was "owned by me and represents a portion of payment due to me for a sale of precious stones and metals acquired and sold overseas. Mr. Bruno was engaged to deliver this payment to me."

27. On or about January 6, 1994, at approximately 2:25 p.m., agents conducting surveillance observed SCHWARTZ leave the Doubletree Hotel and arrive approximately 25 minutes later at the Westin Galleria Hotel in Houston, Texas. As SCHWARTZ attempted to check into the Westin Galleria Hotel, DEA agents placed SCHWARTZ under arrest. SCHWARTZ consented to a search of the bags that he was carrying, which revealed that they contained bundles of United States currency totalling approximately $802,893.

28. On or about January 6, 1994, after being advised of his constitutional rights, SCHWARTZ said, in substance and in part, that on January 4, 1994, between approximately 12:00 p.m. and 1:00 p.m., an unknown male came to Room 371 and gave him three large trash-bags filled with cash in exchange for two bags

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of diamonds and rubies. The unknown man left the room and returned approximately 30 minutes later with three more trash-bags filled with cash that the unknown man gave SCHWARTZ in exchange for two more bags of diamonds and rubies. SCHWARTZ said that he did not want to transport the money alone and that a "Mr. Ronnie Rosenbaum" in Europe contacted him and agreed to send someone to assist SCHWARTZ in transporting the money.[3] SCHWARTZ said that another unknown man then came to Room 371 to help transport the money. When asked about four empty cardboard boxes that SCHWARTZ had left behind in the Doubletree Hotel, SCHWARTZ said that the unknown man who brought the trash-bags full of money in exchange for the diamonds and rubies also brought the boxes. SCHWARTZ said that the boxes had contained nothing but styrofoam, and when asked what happened to the styrofoam, SCHWARTZ replied that the unknown man had taken it with him. SCHWARTZ was released and no charges were filed regarding the above-described events.

25. Subsequently, on or about July 13, 1994, SPENCE, WEINIG and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that the $802,893 seized from ALEXANDER SCHWARTZ by the DEA on January 6, 1994 was SPENCE's money "and represents a portion of the proceeds of a payment due to me for a sale of precious stones and metals acquired and sold overseas. Mr. Schwartz was engaged to deliver this payment to me."

SALERNO is stopped in Houston, Texas with $676,392.

30. On or about January 14, 1994, at approximately 9:30 a.m., agents conducting surveillance in Houston, Texas, observed Fabian Orozco ("Orozco") and Dario Rozo ("Rozo") place two large grey suitcases in the trunk of a white Chevrolet (the "White Chevrolet"). At approximately 11:00 a.m., agents saw Rozo in the White Chevrolet and Orozco in another car drive in tandem to the Sheraton Astrodome Hotel. Rozo parked the White Chevrolet in the parking lot of the Sheraton Astrodome Hotel and then met Orozco in the other car. At approximately 11:30 a.m., agents observed SALERNO enter the White Chevrolet.

31. On or about January 14, 1994, at approximately 1:00 p.m., agents conducting surveillance observed SALERNO enter a Greyhound bus terminal in Houston, Texas, carrying two large grey suitcases. Agents stopped SALERNO for questioning, and a narcotics sniffing dog indicated a positive alert to the presence

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[3] Telephone records from Room 371 reveal that on January 5th and 6th, 1994, there were a total of seven telephone calls made to telephone number (718) 665-6669, which is one of SPENCE's business telephones. Records of the Doubletree Hotel reveal that on January 4th and January 5th, 1994, SCHWARTZ received two messages from SPENCE and two messages from HERMAN.

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of narcotics in the suitcases. SALERNO consented to a search of the suitcases, which revealed that the suitcases contained bundles of United States currency totalling $676,392. When asked about the money, SALERNO said, in substance and in part, that he was transporting the cash for delivery to RICHARD SPENCE in New York City, and that he had planned to board a bus bound for New York with the two suitcases. No charges were filed against SALERNO regarding the above-described events.

32. Subsequently, on or about March 24, 1994, SPENCE, WEINIG and Hirsch filed a claim of ownership with the DEA in which SPENCE swore that $676,392 seized from GARY SALERNO by the DEA on January 14, 1994 was SPENCE's money "and represents a portion of the proceeds due to me for a sale of precious stones and metals acquired and sold overseas. Mr. Salerno was engaged to deliver this payment to me." A confidential source (the "CS")[6] has advised me that in or around March 1994, WEINIG, SPENCE and Hirsch discussed how to characterize the source of the seized currency in filings made to the authorities and agreed that they would claim among other things that the currency represented the proceeds of business transactions involving diamonds and rubies.

33. On or about June 30, 1994, Orozco, Rozo and others were indicted in the Southern District of Texas, Houston Division, on charges of conspiring to distribute five kilograms or more of cocaine in violation of Title 21, United States Code, Section 846, and conspiring to launder narcotics proceeds in violation of Title 18, United States Code, Section 1956. The Houston Indictment, 94 Cr. 144, alleges that both the narcotics and money laundering conspiracies took place from in or about November 1993 through in or about June 1994, and charges as an overt act in furtherance of the money laundering conspiracy that on or about January 14, 1994, the defendants conducted a financial transaction of approximately $676,392.

The February 1994 Zurich, Switzerland Meeting.

34. The CS has advised me that from on or about January 31, 1994, through on or about February 2, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, CHAIM HERMAN, TOHMES PETER, Robert Hirsch and others, met in Zurich, Switzerland to discuss

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[6] CS is a cooperating witness who has executed a plea agreement with the Government and is expected to plead guilty to money laundering, wire fraud, bank fraud and false statement charges in the United States District Court for the Southern District of New York. CS has provided reliable information that has been verified by, among other things, recorded telephone conversations, telephone records, business records, and surveillance.

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the business of the Organization. Among other things, LEON SHULUM WEINMANN and RACHEL WEINMANN participated in a conversation in which Hirsch said that the money they were laundering was the proceeds of narcotics trafficking. In addition, LEON SHULUM WEINMANN and RACHEL WEINMANN said that they had engaged in financial transactions in the aggregate amount of $72,000,000 with PETER during the previous year.

SPENCE and TANON launder money for the Bozeman narcotics trafficking organization.

35. During the course of an investigation into the narcotics trafficking and money laundering activities of Erick Bozeman, a/k/a "Jason Mitchell," James R. Piggot, a/k/a "Blue," (hereinafter referred to as "Blue"), Wayne Rodriguez, Nelson Valencia and others, the Government conducted several court authorized wiretaps (the "Bozeman investigation"). As set forth more fully in a Complaint filed in the Southern District of New York on or about May 27, 1994, from in or about December 1992 through in or about May 1994, Valencia operated out of Cali, Colombia, and supplied cocaine to Bozeman, who operated out of California. After receiving cocaine shipments from Valencia, Bozeman shipped the cocaine to various locations throughout the United States, with the bulk of such shipments going to New York City. Valencia told Bozeman by telephone whom to pay for the cocaine shipments, with certain of the payments being made to people in New York City. Bozeman, in turn, passed Valencia's payment instructions to Blue, who then arranged for payment to be made. Conversations referred to in Paragraphs 36 through 42 below were intercepted in the course of the Bozeman investigation pursuant to court authorized wiretaps.

36. On or about April 12, 1994, at approximately 10:30 a.m., Blue called SPENCE and said, "this is Helen for Dick [SPENCE]." SPENCE and Blue discussed arrangements for Blue to deliver money to SPENCE. SPENCE and Blue discussed whether the delivery would be made by the same person who had made the delivery during the previous week. The conversation ended with SPENCE stating, "give me a call the minute you are ready to go, the earlier [the] better . . . I want to get this stuff right into the bank."

37. On or about April 12, 1994, at approximately 12:20 p.m., Blue called SPENCE and said, "this is Helen for Dick [SPENCE]," to which SPENCE responded, "okay, this is Dick." SPENCE and Blue then agreed that the delivery of money would occur at 1:00 p.m. in front of a hospital located at 121st Street and Madison Avenue in Manhattan. SPENCE told Blue that "his guy" would meet Blue at the hospital and that "his guy" would be driving his [SPENCE's] Nissan.

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38. On or about April 12, 1994, at approximately 12:45 p.m., agents set up surveillance in the vicinity of the North General Hospital located at 121st Street and Madison Avenue, New York, New York. At approximately 1:00 p.m., agents observed TANON arrive in a gold 300-ZX Nissan with Florida license plate number BAR-936, which Department of Motor Vehicle records indicate was registered to Mary Ann Spence at 12-29 Estates Lane, Queens, New York (the "Gold Nissan"). The Gold Nissan had a New York City Fire Department placard in the window. At approximately 1:13 p.m., Rodriguez arrived in the area, exited his car carrying a weighted plastic bag, and entered the Gold Nissan. At approximately 1:15 p.m., Rodriguez exited the Gold Nissan carrying the plastic bag, which appeared significantly less weighted then when Rodriguez had first brought it into the Gold Nissan. TANON then used a cellular telephone in the Gold Nissan.

39. On or about April 12, 1994, approximately forty-five minutes after the above-described meeting, a telephone call was intercepted between Blue and Rodriguez. Blue asked Rodriguez about the guy who picked up the "one cent." Rodriguez explained that he believed that the guy who picked up the "one cent" worked for the fire department because he had a "thing in the window so he can park anywhere."

40. On or about April 12, 1994, at approximately 2:20 p.m., Bozeman called Blue and asked Blue whether the numbers worked, and whether everything went okay. Blue responded that those people were "serious" and that they worked for the fire department. Blue and Bozeman then discussed the delivery of another "C-note."

41. On or about April 12, 1994, at approximately 5:45 p.m., Bozeman called Blue, who referred to the "100 cent" given to "Dick [SPENCE]," as well as specified amounts of money given to other people.

42. On or about April 18, 1994, Valencia called Bozeman and urged Bozeman to deliver money that he owed. Bozeman responded that he had already "turned in 500" and that he would turn in "200 to 250" that week. Bozeman also told Valencia about the problems he had been having trying to reach the people to whom payment was to be made pursuant to Valencia's instructions. Bozeman told Valencia that he wanted to deliver the money to "Dick [SPENCE]." Bozeman explained that he liked "Dick [SPENCE], because when you call Dick [SPENCE] he comes, he's got a lot of people working, you only have to call him one time and he comes."

43. On or about June 28, 1994, Blue, Rodriguez and others were indicted in the Southern District of New York for conspiring to distribute five kilograms or more of cocaine in violation of Title 21, United States Code, Section 846, and on a

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substantive count of money laundering in violation of Title 18, United States Code, Section 1956. Indictment 94 Cr. 417 alleges that the conspiracy took place from in or about January 1991 up to and including the time of the filing of the Indictment, and that Blue and Rodriguez conspired to distribute narcotics with Bozeman, Valencia and others known and unknown to the Grand Jury. In addition, on or about July 19, 1994, Bozeman, Valencia and others were indicted in the Northern District of Georgia for conspiring to distribute and the distribution of five kilograms or more of cocaine in violation of Title 21, United States Code, Sections 841 and 846, and on a substantive count of money laundering in violation of Title 18, United States Code, Section 1956.

SPENCE, WEINIG and Hirsch steal at least $2-5 million.

44. The CS has advised me that by on or about April 19, 1994, SPENCE had amassed at least $2.5 million in narcotics proceeds that he had collected on behalf of the Organization. Rather than laundering the funds through bank accounts so that they could be remitted to the Organization's customers, SPENCE, WEINIG and Hirsch stole the money that SPENCE had amassed and split it amongst themselves. In order to explain the disappearance of the money to the other leaders of the Organization and the Organization's narcotics-trafficking clients, SPENCE, WEINIG and Hirsch created a fraudulent indictment of SPENCE and a fraudulent document purporting to reflect the seizure of the stolen money from SPENCE by the DEA.

The Organization's Activities From May 1994 Through November 1994

45. From in or about May 1994 through the date of the filing of this Complaint, the Organization continued to launder millions of dollars in narcotics proceeds. While the Organization successfully laundered those proceeds, however, the actual seizures by law enforcement and the fabricated seizures by certain members of the Organization began to put pressure on the Colombian leaders of the Organization. Because substantial amounts of money were being lost by the Organization's clients to actual and fabricated seizures, VALENCIA and BOTERO threatened physical harm to PETER, OCAMPO and Hirsch if additional funds were not remitted. At one point, OCAMPO's brother was kidnapped in Colombia as a result of the monies owed. Eventually, after Hirsch's life was threatened, Hirsch, WEINIG and SPENCE pooled some of the money they had stolen and remitted the money to the Organization's customers in order to relieve the threat of physical injury.

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CARROLL and SPENCE discuss
cash that CARROLL has picked up.

46. On or about May 17, 1994, at approximately 2:20 p.m., SPENCE called CARROLL at 32-03 150th Street and asked CARROLL what he had in the "packages." CARROLL replied that he had "214 and a half" in black bags, "132" in a box from Houston, "500" in a U-Haul box, and a big paisley bag with none of the money inside it counted because "it was all mixed in stacks." CARROLL also said that he had two boxes and was "without a clue" as to how much was in them. CARROLL said that he planned to "box it up" and have SPENCE "count it later." SPENCE asked CARROLL if it looked like a lot, and CARROLL replied that there were mostly "small bills." CARROLL said that there were nine boxes totalling approximately $1 million. SPENCE said that he would call CARROLL towards the end of the week and that they would "sit down, figure out what to do." CARROLL told SPENCE that "delivery seems to be the annoying part," and that they should use a motor home. CARROLL explained that with a motor home, "if they stop you, they need a warrant to come in." SPENCE then said, "that's for sure." CARROLL responded "that's for sure . . . not that they ever stop people in motor homes anyway?" SPENCE replied "yeah, that's something that they would never really think of."

HERMAN and SPENCE discuss the Organization's business.

47. On or about May 18, 1994, at approximately 8:00 a.m., SPENCE called HERMAN and said that he had spoken to LEIFER, that LEIFER was not a problem, and that he was going to see LEIFER later that day. HERMAN said that SPENCE should tell LEIFER that SPENCE needed "five every week" and that LEIFER owed him [SPENCE] $125,000. SPENCE replied, "I told him that." SPENCE said that he did not "want to stick around" and that he was going to be "elusive" because he had "too much stuff going." SPENCE told HERMAN that PETER still owed SPENCE "193,000" and that Hirsch told SPENCE that he [SPENCE] should "just take it off the top" of the "first package that comes in." However, "Robert" [Hirsch] told SPENCE that he [Hirsch] did not take SPENCE's "piece" out because PETER had said not to touch it. SPENCE said that he was owed from when SCHWARTZ was in Puerto Rico.

SPENCE sends SALERNO to collect money
and SALERNO stores money at his house.

48. On or about May 19, 1994, at approximately 8:15 a.m., SALERNO called SPENCE and they discussed someone who owed SPENCE "sixty." SALERNO said that he would go with someone else to see that person, and that it would be better to go at night. SPENCE said that when he had seen the person the day before he had been nice, but that he was no longer going to be a nice guy. SPENCE then explained that things had come to the point where SALERNO would have to go see the person.

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49. On or about May 19, 1994, at approximately 8:32 a.m., SPENCE called Isaac Schwartz and identified himself as "Charlie." SPENCE said that he had two people coming to see Schwartz that day, and that "the two guys that are coming down are a lot different than I am . . . I have no control over certain things." SPENCE advised Schwartz to give him "sixty in green."

50. On or about May 21, 1994, at approximately 9:52 a.m., SALERNO called SPENCE and said that he had the bag for SPENCE in his house. SPENCE told SALERNO to drop it off at his [SPENCE's] house [207-19 Melissa Court]. SPENCE said that he wanted to "count it up and, you know, put it in the bank."

Jane Doe No. 1 and SPENCE discuss receiving calls from "Spanish guys".

51. On or about May 21, 1994, at approximately 10:04 a.m., SPENCE called Jane Doe No. 1 at 431 East 165th Street[1] and said that if "Spanish guys" call looking for him, Jane Doe No. 1 should get a beeper number or telephone number where he could contact them. SPENCE told Jane Doe No. 1 that they do not like to leave telephone numbers but that she should try to find out if they were calling from Los Angeles, Houston, or New York. SPENCE said that Jane Doe No. 1 could beep him or provide them with his beeper number.

SPENCE, DILLUVIO and Hirsch discuss transferring funds.

52. On May 25, 1994, at approximately 10:56 a.m., SPENCE called Hirsch and said that he could transfer funds directly to Hirsch without the source of the funds being traced. SPENCE explained that "all it will show is a deposit coming in, it doesn't, it won't even show anything," to which Hirsch replied "perfect." SPENCE said that he would "take care of the wire," that Hirsch should not "mention it to Harvey [WEINIG]," and that "he'll [WEINIG] think it came from the other place." Hirsch said that "they" were asking what had happened in "Allegra" [Los

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[1] The CS advised me that in or about the Spring of 1994, SPENCE gave Hirsch a handgun to use for Hirsch's protection. In addition, the CS advised me that SPENCE gave Hirsch a blank birth certificate and said that Hirsch might need it one day.

[1] The CS advised me that he has been to 431 East 165th Street on several occasions, and that SPENCE keeps a money counting machine on the premises. In or about April 1994, the CS saw SPENCE and TANON counting large amounts of cash in an office on the second floor of 431 East 165th Street. At that time, SPENCE told the CS that he stored cash inside the walls of 431 East 165th Street.

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Angeles] and asked SPENCE if he had heard anything. SPENCE said that he had spoken with HAYDEN and that HAYDEN had not heard anything. Hirsch said that "he" asked me what was going on there [Los Angeles], and SPENCE said that he [HAYDEN] had not heard yet because the guy had not called him. SPENCE explained that "what they normally would do on this when they do drop off for him . . . he's going to call you and let you know what he dropped."

53. On or about May 25, 1994, at approximately 11:05 a.m., SPENCE called DILLUVIO[9] at the Morris Park Citibank and said that he wanted to transfer money from one Citibank account to another Citibank account. SPENCE asked whether his lawyer would know if the money came from SPENCE's Transglobal Account, and DILLUVIO replied that the lawyer would not know, but that he could not wire money from one Citibank account to another Citibank account. DILLUVIO said that SPENCE could make a deposit from one Citibank account to another. SPENCE said that he wanted to deposit $275,000 in his lawyer's account, and told DILLUVIO "I owe you big, believe me when I tell you that." SPENCE said, "you know what I'll do for you Patty . . . instead of sending you someplace, I'll just give you a nice little thank you gift." SPENCE then said that this would be his token of appreciation and that he wanted DILLUVIO to advise him "how I gotta' do it" because he did not "want to have any problems, you know what I mean." SPENCE said that when he saw DILLUVIO in person he would discuss it with her. SPENCE then asked whether this [$275,000 transfer] would be "taken care of," and DILLUVIO replied "275" into his account [Hirsch Weinig firm account], "no problem."

SPENCE and Hirsch discuss a Citibank deposit and cutting HERMAN out of the Organization's business.

54. On or about May 25, 1994, at approximately 11:18 a.m., Hirsch called SPENCE, who confirmed that $275,000, had been deposited into Hirsch's account. Later in the conversation, Hirsch said that HERMAN was "destroying our income earning potential here." Hirsch explained that HERMAN could not "manage to get $120,000 to the right location in two and a half weeks." Hirsch said that of the ".4" [$400,000] they picked up about three weeks earlier, of which they had given "3-7" to HERMAN, only $80,000 had gotten through. Hirsch said that HERMAN was "ruining income, you know, you know, every time he fails to effect one of these wires, right, we're losing $10,000 a piece." SPENCE said that Hirsch should talk to PETER about it.

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[9] The CS advised me that SPENCE had said in or about February 1994, that he had a "girl" in Citibank. SPENCE said that she was an assistant manager and that he [SPENCE] "took care of her."

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SPENCE tells SALERNO how he threatened someone.

55. On or about May 31, 1994, at approximately 9:25 a.m., SALERNO called SPENCE and asked about "the curlies." SPENCE said that he had gone down there to get the other "ten," and that he had to threaten them. SALERNO asked why SPENCE did not call him, and SPENCE replied that he grabbed the guy, threw him in the car and told the guy's brother-in-law that he could call the police, "but one way or another" he was going to walk out of there with ten. SPENCE asked whether SALERNO still had that "shit" in his [SALERNO's] basement, and SALERNO said that he did. SPENCE also said that LEIFER owed him "129" [$129,000].

56. On or about June 2, 1994, at approximately 10:12 a.m., SPENCE called CHRISTOV at 100 Wilshire Boulevard, Suite 1620,[10] and asked how much was sent. CHRISTOV replied that "Donald" [HAYDEN] had taken a look at it and that it was going to be "a nightmare" because the money was mixed with stacks of fifties, twenties, tens, fives and even ones." CHRISTOV said that this was the weirdest one he had seen. SPENCE said that the package was supposed to be $250,000, that they should take twenty five [$2,500] for themselves, and that he would take a look at it when the package arrived in New York. SPENCE said that CHRISTOV should make sure that the package was sent out right away so that he [SPENCE] could deposit it in the bank the next day. SPENCE said that the other person's box should be "one hundred thousand even," that CHRISTOV should take $1,000 from that box, and that CHRISTOV should also send that box out that day.

57. On or about June 2, 1994, at approximately 10:19 a.m., DILLUVIO called SPENCE at the Morris Park Citibank and said that she got the information. SPENCE asked if it looked good, and DILLUVIO replied that did and spelled the name of the account. SPENCE said that "you never know what you are going to get when you deal with these Spanish people," and DILLUVIO laughed. SPENCE told DILLUVIO that he would call the next day because he would also have "stuff" the next day. SPENCE asked DILLUVIO if "one hundred" or "two" would be a problem, to which DILLUVIO replied that she would check, but that she did not think so. SPENCE told DILLUVIO that he would give her whatever she could take.

58. On or about June 3, 1994, at approximately 10:27 a.m., SPENCE called CHRISTOV at 100 Wilshire Boulevard, Suite 1620, and asked if he sent the money out. CHRISTOV responded that the first two packages were sent in the morning and that "your friend's" package went out at about 5:00 p.m. CHRISTOV

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[10] An agent has been to 100 Wilshire Boulevard, Suite 1620, and observed that the sign on the door to Suite 1620 bears the names "Laidlaw Holding Inc." and "Consul Bulgaria."

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said that he counted the money and then placed the money back in the box. SPENCE asked if there was $100,000 in the package, and CHRISTOV replied that there was.

SPENCE and Hirsch discuss their share of a transaction.

59. On or about June 3, 1994, at approximately 11:35 a.m., SPENCE called Hirsch and said that he had received his package. Hirsch asked SPENCE if he could make sense of it, and SPENCE replied that it was a disaster but that it looked like "350." SPENCE said that he wanted to get "it" into the bank later that day. SPENCE and Hirsch discussed what "number" to give "them," and charging "them" a fee of "6-points." SPENCE and Hirsch then calculated that their fee was "21," and that they would send through "325." Hirsch said that he would "tell them by next week, it'll be in the mountains" [sent to the WEINMANNs]. SPENCE said that he would leave "10" in an envelope for Hirsch to pick up later that evening.

60. On or about June 3, 1994, agents conducting surveillance at 431 East 165th Street observed Hirsch arrive at approximately 6:30 p.m. and leave at approximately 6:40 p.m.

SPENCE offers SALERNO's services to collect monies owed.

61. On or about June 3, 1994, at approximately 11:45 a.m., SPENCE called Isaac Schwartz. During the conversation, SPENCE answered to the name "Charlie." Schwartz asked SPENCE whether he had someone available to threaten the wife of someone who owed Schwartz a million dollars, to which SPENCE replied that SALERNO would do it. Schwartz told SPENCE to have SALERNO threaten the wife when her husband would be at temple on Saturday. Schwartz then asked whether SALERNO could bring some other big guys with him, and asked whether SALERNO would bring "something" to show the wife. SPENCE said that SALERNO always walked around with "something," and Schwartz responded that "it should be visible." SPENCE said that SALERNO would contact Schwartz.

KALANZ stores cash in his locker at the 48th Precinct.

62. On or about June 3, 1994, at approximately 11:57 a.m., SPENCE called KALANZ on and said that he could not put anything in the bank. SPENCE asked KALANZ if he could put it in his [KALANZ's] locker. KALANZ said that it would be safe in his locker, and asked SPENCE if it was in one box. SPENCE said that he would put it in one suitcase. KALANZ said that his locker was as big as a refrigerator, that it would fit a suitcase, and that he would pick up the package at around 2:00 p.m.

63. On or about June 3, 1994, at approximately 2:11 p.m., agents conducting surveillance observed KALANZ arrive in

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the vicinity of 431 East 165th Street, in a red Nissan bearing New York license plate "U-tool" (the "Red Nissan"). At approximately, 2:20 p.m., agents conducting surveillance observed KALANZ arrive at the NYCPD 48th Precinct Building, Bronx, New York in the Red Nissan. KALANZ exited the Red Nissan, and was seen entering the 48th Precinct building with a large black shoulder bag ("Bag-1"), which appeared to be heavy and weighted.

SPENCE gives LEIFER instructions and they discuss HERMAN.

64. On or about June 3, 1994, at approximately 1:19 p.m., SPENCE called LEIFER and said that he was holding "the stuff" rather than putting it in the bank. SPENCE gave LEIFER his personal bank account number and told LEIFER to use that account if LEIFER did anything while SPENCE was away. SPENCE said that HERMAN had been making a lot of waves and that he [LEIFER] should not tell HERMAN anything. SPENCE said that HERMAN was mad because he [HERMAN] was being pushed out and was not getting any of the "stuff" [money].

SPENCE and Hirsch discuss future plans for business.

65. On or about June 3, 1994, at approximately 1:30 p.m., Hirsch called SPENCE and they agreed that Hirsch would leave information for wiring money to the account [the WEINMANN's account] with EZELL. SPENCE also said EZELL had Hirsch's package. Hirsch said that he would give "Harvey [WEINIG] some spending money," and SPENCE said that he would not "tell him anything, just give it to him." Hirsch said that if SPENCE sent money to Shulum [SHULUM WEINMANN] "nobody ever knows where it came from anyway." SPENCE said that the phone number he had given Hirsch was only "for people who I'm going to get stuff from," and that he did not want any other contacts or confirmations. Hirsch said that he understood -- "only when someone had a delivery to make," and SPENCE said, "that's it." Hirsch said that from then forward they should not do "less than twenty."

KALANZ stores another suitcase in his locker at the 48th Precinct and then brings two suitcases to the bank.

66. On or about June 6, 1994, at approximately 10:28 a.m., SPENCE called EZELL at 431 East 165th Street and SPENCE asked whether EZELL had put "that" in the bank that morning, and EZELL replied that she had. SPENCE told EZELL to call "Mike the Cop" [KALANZ] to determine whether he was on the way down with the suitcase. EZELL asked SPENCE if KALANZ had it, to which SPENCE replied that KALANZ had put it in his locker at work. SPENCE said that KALANZ would bring a suitcase directly to DILLUVIO at Citibank and that the suitcase contained "400" [$400,000]. SPENCE asked EZELL to call KALANZ to see whether he

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could pick up another suitcase, and to call DILLUVIO to inform her about these cash deliveries.

67. On or about June 6, 1994, at approximately 10:46 a.m., DILLUVIO called EZELL at the Morris Park Citibank and EZELL asked whether DILLUVIO could take it all. DILLUVIO replied that they would take the whole $700,000 because they were doing a shipment on Wednesday. DILLUVIO then said that it would "take all friggin' day to count that kind of money."

68. On or about June 6, 1994, at approximately 10:47 a.m., EZELL called KALANZ and said that the bank could not take anything from "us" that day but that DILLUVIO could take everything at the bank the next day. EZELL then asked KALANZ whether she should meet him in front of the bank the following morning. KALANZ asked what time the "second thing" was supposed to arrive because he wanted to put that in the "precinct" (48th Precinct Building) as well.

69. On or about June 6, 1994, at approximately 1:42 p.m., agents conducting surveillance observed KALANZ arrive in the vicinity of 431 East 165th Street in the Red Nissan. At approximately 2:33 p.m., agents saw KALANZ arrive at the NYCPD 48th Precinct Building, Bronx, New York in the Red Nissan. KALANZ exited the Red Nissan and removed a large bag from the trunk. The bag was a large, dark bag with a design ("Bag-2"), and appeared to be weighted. About 10 minutes later, KALANZ entered the 48th Precinct building with Bag-2.

70. On or about June 7, 1994, at approximately 8:17 a.m., agents conducting surveillance observed KALANZ exit the 48th Precinct Building, Bronx, New York, carrying Bag-1 and Bag-2. KALANZ placed Bag-1 and Bag-2 in the trunk of the Red Nissan, entered the car, and left the area. At approximately 8:29 a.m., agents observed KALANZ park in front of the Morris Park Citibank. Several minutes later, KALANZ removed Bag-1 and Bag-2 from his trunk, closed the trunk and entered the bank with Bag-1 and Bag-2. At approximately 8:36 a.m., agents observed KALANZ exit the bank without Bag-1 and Bag-2, enter the car, and depart.

SPENCE gives EZELL instructions concerning $1.1 million.

71. On or about June 8, 1994, at approximately 4:55 p.m., SPENCE called EZELL and asked whether she had gotten hold of KALANZ, to which EZELL replied that she had. SPENCE then said that there should be five packages containing $1.1 million. SPENCE instructed EZELL that when "Mike" (KALANZ) arrived, she should put them in suitcases with the deposit slips and send them where they had to go.

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KALANZ counts money at 431 East 165th Street.

72. On or about June 9, 1994, at approximately 12:48 p.m., SPENCE called KALANZ at 431 East 165th Street and asked how much KALANZ had there (431 East 165th Street). KALANZ replied that he brought "516" [$516,000] and that he was "counting a little bit of assorted stuff." Later in the conversation, KALANZ said that there were a "couple of bundles" that he had broken down and was counting at that time.

Jane Doe No. 1 and SPENCE discuss a $500,000 shipment.

73. On or about June 17, 1994, at approximately 7:52 a.m., SPENCE called Jane Doe No. 1 and asked her to have EZELL call DILLUVIO at the bank because there was a shipment of "500" [$500,000] expected for the coming Monday.

SPENCE, JANZ, EZELL Jane Doe No. 1 and DILLUVIO coordinate laundering cash sent via Federal Express and cash picked up by SALERNO.

74. On or about June 17, 1994, at approximately 3:35 p.m., SPENCE called JANZ and said that a package would be arriving the next day from Federal Express. SPENCE said that JANZ should keep an eye on the package because there was money in it, and that he [SPENCE] would tell JANZ what to do with the money.

75. On or about June 18, 1994, at approximately 1:40 p.m., SPENCE called JANZ at 431 East 165th Street and asked whether his package had arrived, and JANZ replied that it had arrived in a Federal Express Box. SPENCE told JANZ to "open it up, put the stuff in a bag, and take it home with you, and bring it in with you on Monday." SPENCE said that "it should be one hundred thousand." Later in the conversation, SPENCE said that JANZ should "open those things up, just make sure no one's around when you open the box up."

76. On or about June 20, 1994, at approximately 8:02 a.m., SPENCE called Jane Doe No. 1 at 431 East 165th Street. Jane Doe No. 1 explained that SALERNO had brought a box in a shopping bag to Light Trucking [431 East 165th Street] earlier that morning and that they had put it by EZELL's desk. SPENCE told Jane Doe No. 1 that TANON could take a ride with EZELL to the bank. Later in the conversation, SPENCE told Jane Doe No. 1 that JANZ had $100,000 and that Jane Doe No. 1 should have EZELL make a Transglobal Account deposit with that money. SPENCE said that the other bag contained $294,000, which should also be deposited as soon as possible into the Transglobal Account.

77. On or about June 20, 1994, at approximately 9:45 a.m., EZELL called DILLUVIO at the Morris Park Citibank and said

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that she had $354,000 to bring to the bank, to which DILLUVIO replied, "that's what he [SPENCE] said."

78. On or about June 20, 1994, at approximately 11:16 a.m., agents conducting surveillance observed EZELL and JANZ leave 431 East 165th Street in JANZ's white Ford Bronco. At approximately 11:35 a.m., JANZ and EZELL arrived at the Morris Park Citibank. EZELL carried a bulky plastic bag into the bank followed shortly thereafter by JANZ who carried a large shopping bag that appeared to contain a box into the bank. EZELL and JANZ left the bank separately. JANZ left the bank empty handed, and EZELL no longer had a bulky plastic bag.

79. On or about June 20, 1994, at approximately 12:22 p.m., SPENCE called Jane Doe No. 1 at 431 East 165th Street. Jane Doe No. 1 said that they [EZELL and JANZ] would be back in fifteen minutes. SPENCE said that he wanted to make sure everything went alright, and Jane Doe No. 1 said that everything went alright.

SPENCE asks EZELL to coordinate transactions with DILLUVIO and KALANZ.

80. On or about June 21, 1994, at approximately 2:57 p.m., SPENCE called EZELL at 431 East 165th Street and said that he might have "500" being dropped off the next day. SPENCE asked EZELL to call DILLUVIO to ask her if she could take it. In the alternative, SPENCE told EZELL to ask KALANZ if he could put it in his locker. EZELL asked SPENCE what time, to which SPENCE replied that SALERNO would probably drop it off early if he picked it up that night. In addition, SPENCE instructed EZELL to put $13,000 from "Trans" [the Transglobal account] into the "745 Corp. Account." SPENCE also said that he would have some other deposits, but that he would take care of them himself. SPENCE asked EZELL to have KALANZ call him the next day regarding the pick up of some cash in Queens.

81. On or about June 22, 1994, at approximately 9:18 a.m., SPENCE called Jane Doe No. 1 at 431 East 165th Street. SPENCE said that SALERNO was coming with a package of about "500" ($500,000) and that EZELL was supposed to call the bank and knew what to do with it. SPENCE then spoke with JANZ and said that SALERNO was bringing a package for EZELL to be put in the bank.

The DEA's Miami Investigation: SPENCE meets a confidential informant to pick up $425,000 and gets stopped by the Police.

82. Since in or about March 1994, the DEA in Miami, Florida has been investigating John Doe No. 1 for the importation and distribution of cocaine in violation of Title 21, United States Code, Sections 841 and 846. For several months, John Doe

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No. 1 negotiated the sale of 100 kilograms of cocaine to two confidential informants ("CI-1" and "CI-2") and an undercover agent ("UC") working with the DEA in Miami.

83. On or about June 21, 1994, John Doe No. 1 finalized negotiations for the sale of 50 kilograms of cocaine to CI-1, CI-2, and UC, (collectively the "Undercovers"). John Doe No. 1 insisted on receiving $850,000 before he would deliver any cocaine, and negotiated for two payments of $425,000 on consecutive days, to be followed by the delivery of the cocaine on the third day. John Doe No. 1 told CI-1 that he would provide a telephone number for the person to whom the Undercovers could make their payments for the cocaine.

84. On or about June 21, 1994, CI-1 spoke to John Doe No. 1, who provided CI-1 with a cellular telephone number that telephone records indicate was registered to Robert Hirsch, and said that the person whom CI-1 spoke to on the cellular telephone would be responsible for picking up the payment on behalf of John Doe No. 1. In addition, John Doe No. 1 gave explicit instructions that the person who placed the telephone call to Hirsch's cellular telephone should use the password "Juan Guillermo" [OCAMPO].

85. On or about June 23, 1994, CI-1 called Hirsch, who CI-1 referred to as "Charles." CI-1 said that Juan Guillermo needed a telephone number in Miami for some "receipts." Hirsch asked where "the merchandise" that needed to be picked up was, and UC replied "Miami."

86. On or about June 23, 1994, CI-1 and CI-2 called Hirsch, who again answered to the name "Charlie." During the conversation, Hirsch gave CI-2 a telephone number that telephone records indicate was registered to SPENCE at his Florida address. CI-2 asked Hirsch what "his" name was, to which Hirsch responded: "just tell him you're from, uh, Roberto . . . . he'll talk with you, he'll set it up."

87. On or about June 23, 1994, CI-1 and UC called the number that Hirsch provided and spoke to SPENCE. During this conversation, UC and SPENCE arranged a time and place for the payments to be delivered to SPENCE.

88. On or about June 23, 1994, SPENCE met with CI-1 in the parking lot of a Burger King Restaurant in Florida. CI-1 told SPENCE that CI-1's car contained $425,000, which was the first of the two payments. (In fact, CI-1's car did not contain $425,000.) At the meeting, SPENCE and CI-1 exchanged cars: SPENCE departed in CI-1's rental car and CI-1 departed in SPENCE's 560 SEL Mercedes. Shortly after leaving the Burger King in CI-1's rental car, SPENCE was stopped by Local Police Officers for a minor motor vehicle infraction. SPENCE was subsequently

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interviewed by local police officers and the DEA. On both occesions, when asked about the $425,000 purportedly in the car, SPENCE said that he obtained the money from a Hasidic Jewish businessman at a nearby condominium complex, and that he handled a lot of cash in his business. DEA Agents gave SPENCE a receipt for CI-1's rental car and for "two boxes containing an undetermined amount of currency" (the "Receipt"). SPENCE was then released.

89. In subsequent conversations between John Doe No. 1 and CI-1, John Doe No. 1 stated that SPENCE was going to send John Doe No. 1 a receipt that would prove that the money was really seized and not stolen by SPENCE. John Doe No. 1 also stated that once he received a receipt he would send it to the Undercovers. A review of a facsimile copy of the receipt that John Doe No. 1 sent to the Undercovers revealed the following that (i) on or about June 24, 1994, at approximately 12:17 p.m., the offices of Hirsch Weinig sent the Receipt by facsimile transmission to John Doe No. 1, and (ii) on or about June 25, 1994, at approximately 12:53 a.m., John Doe No. 1 sent the Receipt by facsimile transmission to the Undercovers.

90. On or about June 25, 1994, SPENCE filed an offense incident report with the Fort Lauderdale Police Department. In the report, SPENCE claimed that he parked his 560 SEL Mercedes on June 23, 1994, and that when he returned to retrieve the car two days later, it was missing.

The June 1994 Zurich, Switzerland meeting.

91. The CS advised me that on or about June 28 through on or about June 30, 1994, PETER, LEON SHULUM WEINMANN, RACHEL WEINMANN, Hirsch and others met in Zurich, Switzerland. At these meetings, Hirsch -- on behalf of PETER -- asked LEON SHULUM WEINMANN and RACHEL WEINMANN to extend PETER credit. The CS advised me that during these meetings, LEON SHULUM WEINMANN and RACHEL WEINMANN had $3,000,000 worth of Italian Lira in a safe in their home.

SALERNO tells SPENCE how SALERNO avoided arrest.

92. On or about July 1, 1994, at approximately 10:11 a.m., SALERNO called SPENCE and said that he squeezed "Sofa" and was going to squeeze "Bernie." SALERNO said that he had all the bad checks belonging to "Moses, Sofa, Bernie and Phil," and that these bad checks got him out of "a charge" of strong-arming Sofa. SALERNO said that the police were called and would have arrested him if he did not have the bad checks. In addition, SALERNO said that he would like to have beaten "this guy," but Bernie owed him $1 million. SALERNO said that he was going to receive a shipment of something, and SPENCE told SALERNO to watch himself.

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SPENCE, CARROLL and Hirsch launder $1 million in Canadian currency.

93. On or about July 1, 1994, at approximately 2:05 p.m., SPENCE called Hirsch and they discussed $1 million in Canadian currency. SPENCE said that he thought it could be put into the bank here (New York). SPENCE said that he would get rid of it and wire the whole thing up.

94. On or about July 1, 1994, at approximately 3:11 p.m., SPENCE called CARROLL and asked how many boxes CARROLL had with "that stuff." CARROLL said that he had five "Fed Ex" (Federal Express) boxes, and that there was $980,000 Canadian. SPENCE asked what the other stuff was, to which CARROLL replied that there were nineteen one-thousand dollar Swiss bank notes to bring the total to the equivalent of one million Canadian dollars. SPENCE asked how much of the other stuff CARROLL still had, and CARROLL replied that he had approximately $130,000. SPENCE then discussed CARROLL's expenses and fees for his trip to Canada, and told CARROLL to take $5,000. SPENCE said that he wanted to come by and pick up the cash and the Canadian stuff because he (SPENCE) had an appointment with the bank on Tuesday morning.

95. On or about July 5, 1994, at approximately 10:17 a.m., SPENCE called Hirsch and said that he "put in the Canadian stuff." Hirsch asked how it had gone, to which SPENCE replied that he had to have an armored car service pick up the money from the bank and take it to a "special bank that handles foreign currency."

SPENCE and Hirsch discuss a pick-up in Canada, HERMAN, OCAMPO, PETER, the Houston seizures, and wiretaps.

96. On or about July 7, 1994, at approximately 11:37 a.m., SPENCE called Hirsch and said that he had just spoken to "the guy up north (in Canada)." SPENCE said that his guy was supposed to be meeting with her at 1:30 p.m., and that she could not be late because his guy had to catch a flight at 2:30 p.m. SPENCE explained that this would work out better than they expected because it could be executed by wire transfer rather than handling it "thirty times." Hirsch said that he thought PETER was not paying for the merchandise in a timely fashion, and SPENCE said that he had the same impression from "L.A." SPENCE then said he wanted to ensure that OCAMPO knew what was going on, and Hirsch said that he had just told OCAMPO that he was having a problem because PETER was not paying people in a timely fashion. SPENCE asked what had happened to the "50" that Chaim (HERMAN) had, to which Hirsch replied that HERMAN had sent "46" the previous week, but that he (HERMAN) was out of the picture. Hirsch said that if they could work without PETER, it could be very professional. SPENCE said that it would be great if OCAMPO

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gave Hirsch all the information, and Hirsch responded that was what he [Hirsch] was headed towards. Hirsch said that he received a copy of a transcript of "a probable cause hearing that took place in Houston, Texas." Hirsch explained that the reason the transcript was "important, is because it speaks to the issue that there were, in February, there were wiretaps on some of these people." Hirsch said that the DEA could not tie SALERNO, BRUNO and SCHWARTZ to "these people," which Hirsch said was "a good thing." Hirsch said that they should "always be suspect of wiretaps going on, on the other end."

SPENCE and Hirsch arrange for TANON to make a pick-up in Canada.

97. On or about July 7, 1994, at approximately 1:36 p.m., Hirsch called SPENCE and said that he had heard from "Sophie, our woman, you know, the one from up there [Canada]." Hirsch said that she [Sophie] was extremely apologetic, and that he told her that they would not send a guy until she was "totally ready, boxed up and ready to move." Hirsch said that she [Sophie] explained to him that she would be completely ready the next day. SPENCE said that it was a quick flight and that he would send TANON.

98. On or about July 8, 1994, at approximately 9:05 a.m., Sophie called SPENCE at 431 East 165th Street and said that she was ready. SPENCE asked if Sophie would be ready, and she replied that she would. SPENCE asked Sophie if she was "100% sure," and Sophie said that she was. SPENCE said that his guy [TANON] would be at the "Westin Montreal on Sherbert Street" and said that the room would be registered in the name "Peter Thomas."

PETER and Hirsch discuss missing money.

99. On or about July 8, 1994, at approximately 12:47 p.m., PETER called Hirsch and they discussed[11] an accounting discrepancy. Hirsch said that he would check his paperwork and come up with exact figures. PETER said that exact figures were necessary because he (PETER) was missing a "container." PETER reiterated that he was missing over $1 million and said that "if someone holds $40,000, they are ready to kill him."

TANON picks up money in Canada and sends it to SPENCE and JANZ at 431 East 165th Street via Federal Express.

100. On or about July 8, 1994, at approximately 1:22 p.m., Hirsch called SPENCE and asked if he had heard from

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[11] Most of the conversations between PETER and Hirsch referred to herein were conducted primarily in Hebrew.

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Montreal. SPENCE said that he had TANON up there.

101. On or about July 8, 1994, at approximately 1:35 p.m., TANON called SPENCE and said that he was in the hotel. Further investigation has revealed that TANON was staying in the Westin Mont-Royal Hotel in Montreal, Canada. SPENCE told TANON to call him [SPENCE] when he had a moment, but that as soon as TANON got "it" he should make sure that "they're in there good and tight."

102. On or about July 8, 1994, at approximately 3:42 p.m., SPENCE called TANON and said that he had spoken with Sophie, who was on the way. SPENCE said that TANON should hide the boxes from Sophie because they did not want her to know what TANON was doing with the money. SPENCE instructed TANON to put all the money in boxes and send it by Federal Express to "Light Trucking" [431 East 165th Street]. SPENCE told TANON that if all the money did not fit, he should put the rest of it in a hotel laundry bag.

103. On or about July 8, 1994, at approximately 5:53 p.m., TANON called JANZ, who said he wished he could have done the Canadian trip. TANON said that JANZ should have SPENCE call him and that JANZ should tell SPENCE that the mission had been accomplished.

104. Federal Express records indicate that on or about July 8, 1994, three packages were sent from "Peter Thomas, Westin Mont. Royal" in Montreal, Canada to "Light Trucking, 431 East 165th Street, Bronx, New York." Each of the three packages weighed between approximately 15 and 16 pounds, and were received at Light Trucking on or about July 9, 1994, at approximately 11:18 a.m.

105. On or about July 9, 1994, at approximately 11:54 a.m., TANON called a person at 431 East 165th Street and asked if everything had arrived. The person replied that it had. TANON said that he would be leaving Canada at about 3:00 p.m.

Two of the Organization's Couriers are Arrested in Italy.

106. On or about July 8, 1994, the Carabinieri, the Italian Federal Police (hereinafter the "CBI") arrested five people for the distribution of narcotics and seized eighty (80) kilograms of cocaine base, as well as chlorine-hydrate and other substances used for processing cocaine, in Italy. The CBI learned from the people arrested that the cocaine base was supposed to be sold in Italy, and arrangements to pick up the money were to be made with PETER.

107. Based on the information obtained from those arrested in Italy, the CBI had an undercover agent call PETER on

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the telephone to arrange the transfer of the payment money for the 60 kilograms of cocaine base. After a time and place was agreed upon, two money couriers arrived at a hotel in Italy where they were arrested.

108. The Bundeskriminalamt, the German Federal Police (hereinafter the "BKA"), interviewed the two money couriers, who said that PETER had recruited them to transport money from European countries to Germany. The two money couriers also reported that in the past, they had made approximately twenty-five (25) trips to pick up money from cities throughout Europe, including Milan, Rome, Barcelona, Madrid, and Amsterdam, and that they had always used aliases and always met the people they picked up the cash from in hotel rooms. The two money couriers stated that they always received the hotel room information and the aliases to use from PETER, and that after making each pick-up, they had delivered the money (via car) to the WEINMANNs.

PETER and Hirsch discuss Italy and argue about money sent to SHULUM WEINMANN.

109. On or about July 11, 1994, at approximately 9:38 a.m., PETER called Hirsch and said that something urgent had happened in Italy. Hirsch asked what was going on, and PETER responded that he would explain it later. PETER asked Hirsch if he checked everything, and Hirsch replied that he had to go to the office to check. PETER and Hirsch then argued about whether "something" was sent to "Shulum" [WEINMANN]. Hirsch insisted that it had been sent, and PETER insisted that it had not been.

SPENCE and Hirsch arrange a pick-up in Puerto Rico.

110. On or about July 11, 1994, at approximately 11:16 a.m., John Doe No. 2, called Hirsch, who asked John Doe No. 2 where he was, to which John Doe No. 2 responded "Puerto Rico." Hirsch said that he was going to send someone down and asked how much "merchandise" John Doe No. 2 had, to which John Doe No. 2 responded "a lot, a lot, a lot." Hirsch asked John Doe No. 2 if he wanted to give Hirsch one container, to which John Doe No. 2 responded "I think I have close to it, maybe I have seven or eight hundred, something like that." John Doe No. 2 told Hirsch to call him at the "store," and provided a telephone number in Puerto Rico.

111. On or about July 11, 1994, at approximately 11:18 a.m., Hirsch called SPENCE and said that "we have some stuff that has to be delivered down where SCHWARTZ had a problem [Puerto Rico], you know, you have been there recently." SPENCE asked, "which one, there was two of them?" Hirsch said that it was the first problem where they could not find the bag [the October 6, 1993 incident with SCHWARTZ in Puerto Rico], and SPENCE indicated that he understood. Hirsch said, "they're ready" and "they want

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us to send someone down today if possible." SPENCE said that he was sending someone at that moment.

112. On or about July 11, 1994, at approximately 1:31 p.m., SPENCE called Hirsch and said that his guy [CARROLL] would be going Wednesday morning, that he would arrive in the afternoon. SPENCE also stated that he [CARROLL] would be staying at the same place that he had always stayed. SPENCE further stated that he had received the stuff from "up north" and had to make arrangements to get "it" to Long Island. SPENCE explained that "it" it was four hundred, two hundred new and two hundred old.

HERMAN and SPENCE discuss putting money in the bank.

113. On or about July 11, 1994, at approximately 3:01 p.m., LEIFER called SPENCE at 431 East 165th Street, and said that there was "450" in the bank and that SPENCE should determine whether the money showed up in the morning. SPENCE then said that he had spoken to a girl at the bank and that everything was fine. SPENCE said that he had a big package arriving on Wednesday, and asked LEIFER how much money LEIFER owed SPENCE, to which LEIFER responded "155." SPENCE and LEIFER then discussed depositing money in Chemical Bank, and SPENCE asked LEIFER to call as soon as LEIFER knew what was going on.

PETER and Hirsch discuss money seizures and money owed.

114. On or about July 12, 1994, at approximately 6:31 p.m., PETER called Hirsch, who said that he had to finish papers involving seizures. PETER asked Hirsch if it was obvious that there was a "connection," and Hirsch responded that it was. PETER said, "that means our situation down there is not good," and asked, "could they prove we've been in touch?"

115. On or about July 12, 1994, at approximately 9:56 a.m., PETER called Hirsch, who said that PETER had lied, that he [Hirsch] new exactly how much had been sent, and that it was impossible for PETER to be missing one and one-half containers. When PETER asked how that was possible, Hirsch said that he had all the information in front of him and that he would fax a copy of the transfers.

SPENCE gives CARROLL instructions regarding a money pick-up in Puerto Rico.

116. On or about July 12, 1994, at approximately 10:19 a.m., SPENCE called CARROLL and said that it was "the guy who owns the stores." SPENCE explained that he was the same person who had met CARROLL before, and that he was going to meet CARROLL again at the same place. SPENCE provided CARROLL with a telephone number and said that "he" would pick up CARROLL and

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that he was supposed to have "one container," and possibly a second "container" the following day.

SPENCE, OCAMPO and Hirsch discuss a transfer of $465,000 and SPENCE's numbers for June 1994.

117. On or about July 12, 1994, at approximately 2:23 p.m., SPENCE called Hirsch and said that the "thing" had been wired out on June 24, 1994 for $465,000. SPENCE said that the account [Transglobal] was supposed to be closed, and Hirsch said that he would make it look like a wire transfer so that no one would know where it came from. SPENCE said that Hirsch should watch himself, and Hirsch said that he knew to be careful because it was a Transglobal account. Hirsch said that he was going to send the amount of the transfer and the confirmation. SPENCE said that $465,000 went to Switzerland on the 22nd and that was what he [PETER] received.

118. On or about July 12, 1994, at approximately 3:20 p.m., SPENCE called Hirsch and said that Hirsch should call the Shulum [WEINMANNs'] account to eliminate the problem by asking Shulum when he received it [the $465,000]. SPENCE explained that Shulum [WEINMANN] should have received "it" because it was shipped. SPENCE said that he had one for "465," "695," "970," "15,130," "141,835," and "40,688" in the month of June. Hirsch said that they had two big ones, and SPENCE replied that they were deposited separately and that they had deposit slips for them. SPENCE said that he had his book and had copies of "these," and that his book confirmed what PETER had received. SPENCE also stated that PETER had tried to confuse Hirsch, and that is why SPENCE needed to keep his book.

119. On or about July 13, 1994, at approximately 11:22 a.m., OCAMPO called Hirsch, who told OCAMPO to stay in a hotel in Frankfurt [Germany] that had a fax machine. Hirsch said that he would fax OCAMPO all of the transfers since May 10th and mentioned that PETER had said that "the mountains" had never received the transfer for "465 thousand."

CARROLL makes a pick-up in Puerto Rico.

120. On or about July 13, 1994, agents conducting surveillance in New York observed CARROLL board an American Airlines flight to San Juan, Puerto Rico. Once in Puerto Rico, CARROLL was picked up at the airport by John Doe No. 2, who was driving a Burgundy Mitsubishi. At approximately 2:18 p.m., CARROLL and John Doe No. 2 went to an apartment complex in Santruce, Puerto Rico. At approximately, 2:24 p.m., CARROLL and an unknown male left the apartment complex in a blue van. At approximately 3:29 p.m., the unknown male dropped off CARROLL at the Hyatt Dorado Beach Hotel in Dorado Beach, Puerto Rico.

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121. On or about July 13, 1994, at approximately 3:58 p.m., CARROLL called 431 East 165th Street and left SPENCE a message that he had arrived safely and that he had received "all the parts."

122. On or about July 14, 1994, at approximately 11:11 a.m., SPENCE called Hirsch and said that he had just talked to "Danny" [CARROLL] and that he had just picked up one container. Hirsch said that they were going to get it back and transfer it quickly and directly because they had not been paid on time in the past. Hirsch said that he wanted to get the money to SPENCE and wire it out to where it was supposed to go within 72 hours and that they were going to have to take the slack from all the "fuck-ups in Switzerland." Hirsch said that PETER had hurt a very good account. SPENCE asked if it was "Helen?," and Hirsch replied that it was.

WEINIG and Hirsch discuss sending a confirmation.

123. On or about July 15, 1994, at approximately 10:48 a.m., Hirsch called WEINIG at WEINIG's office at 1540 Broadway, Suite 29-A, and said that he had done a "three way" with the bank and that the bank had just done it. Hirsch told WEINIG "to leave instructions to fax the federal wire numbers." Hirsch asked WEINIG whether they should wire a one-sentence confirmation, to which WEINIG replied that they should wait until Monday because it was not urgent. Hirsch said "the urgency is that the idiot [PETER] needs the million."

PETER and Hirsch discuss the receipt of "one container."

124. On or about July 15, 1994, at approximately 4:35 p.m., PETER called Hirsch, who said that they had received something "over there." PETER asked how much, and Hirsch replied "one container." Hirsch said "he calls every two hours. I sent him the faxes to 305. I spoke to him about the container and P. R., that we will process it quickly." PETER said that he had a discrepancy of $8 million, and Hirsch said they would find it, but that it was not there. Hirsch said that he had every transfer that went out, each one, including to the bank of Korea and Switzerland. Hirsch said that he worked an entire week on the accounting for the transfers and that he left all the papers in the office. In addition, Hirsch said, "I have everything. Each paper, I gathered everything."

SPENCE tells HAYDEN about being stopped
by Police in Florida on or about June 23, 1994.

125. On or about July 18, 1994, at approximately 1:07 p.m., HAYDEN called SPENCE and asked SPENCE if he was "doing any more with the guy down here [Los Angeles]," to which SPENCE responded that he was not. SPENCE said that "we" do not need any

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aggravation, and that "we run our end clean." SPENCE further stated that he had spoken to the guy "we work for," and they had "straightened it all out." SPENCE said that he did not want to deal with "the guy" because he was always a problem, and HAYDEN said that it seemed that way because "we" had other "bullshit." SPENCE next stated that he had been dealing with four other places in addition to Los Angeles without any problems and so the problems that existed with Los Angeles were not his fault but that of the people in Los Angles. In response, HAYDEN stated that the problem "must be someone in their group," and that CHRISTOV had previously explained the one problem to SPENCE. In response, SPENCE stated, "I'll tell you a better one [problem], what happened to me in Miami. These people are nice, but they are stupid." HAYDEN said that it was "crazy on the street." SPENCE then explained that the woman had made him take her car and that it did not have a valid registration sticker on it at the time and that, as a result, he had been pulled over by the Police. HAYDEN then asked where the "merchandise" was, to which SPENCE replied that it was in the back of the car when the car was pulled over. SPENCE said that he told the guy [police officer] that he could check the car, that he carried a lot of money, and that it did not fit in his wallet, to which the police officer responded by asking how much money SPENCE carried, to which SPENCE replied, "what, are you writing a book?" SPENCE then said, "it was hilarious," because "the cop never saw that much money in his life."

Hirsch and SPENCE discuss transferring funds and eliminating PETER.

126. On or about July 19, 1994, at approximately 2:26 p.m., Hirsch called SPENCE and explained that SPENCE had transferred it into an escrow account and then, under instructions from their clients, put the money into the Guardian Funding escrow account. Hirsch next stated that Guardian Funding was instructing them to send "it" to a variety of locations, and that OCAMPO was sending the destinations for the payments to Hirsch. Finally, Hirsch said that they were okay, that it was done, but that they were eliminating PETER.

LEIFER and SPENCE discuss opening accounts and depositing funds.

127. On or about July 20, 1994, at approximately 2:06 p.m., LEIFER called SPENCE and told SPENCE that he [LEIFER] was on a "cordless," [telephone] and asked SPENCE whether that was okay, to which SPENCE responded that it was. LEIFER then said that people could not do more than one hundred and fifty every day. LEIFER then asked whether they could be traced, and SPENCE answered that he did not know. SPENCE then told LEIFER that he should open accounts with as little as twenty dollars, bring checks a week later, and then close the accounts when the checks

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cleared. SPENCE said that he could do big ones, but that it was going to cost LEIFER. SPENCE mentioned to LEIFER that SALERNO was conducting a pick-up for SPENCE at that time, and that he would contact LEIFER as soon as he had heard from SALERNO.

128. On or about July 21, 1994, at approximately 1:06 p.m., LEIFER called SPENCE and asked if there was any news [regarding the SALERNO pick-up]. SPENCE said that he would make a few phone calls to see what was going on. LEIFER said that the problem was with the account, to which SPENCE replied that the account was the easy part because once it was closed, it was closed. SPENCE said that because it was a corporation, there was no liability. SPENCE said that anyone could open up a corporate account if they had a corporate seal and an identification number, and told LEIFER to use his congregation as a mailing address. LEIFER stated that he did not want to give any personal identification to open an account, and SPENCE responded that he would try to find someone to open the account for LEIFER.

129. On or about July 22, 1994, at approximately 1:50 p.m., LEIFER called SPENCE and said that he had "140" and that he wanted SPENCE "to put it in." SPENCE said that it was too late, and that he would pick it up on Sunday. SPENCE and LEIFER talked about SALERNO being arrested, and SPENCE said that it had nothing to do with him.

SPENCE lies about the disappearance of his Mercedes.

130. On or about July 25, 1994, at approximately 9:11 a.m., SPENCE received a call from a claims representative at Allstate Insurance Company in Fort Myers, Florida. That representative informed SPENCE that their telephone call was being recorded and that she needed to obtain from SPENCE a detailed account concerning the circumstances surrounding the alleged disappearance of his Mercedes. After acknowledging that the conversation was being recorded, SPENCE explained that he was watching a New York Knick basketball game at a bar when his Mercedes was stolen, and that he wanted to settle the claim as soon as possible.

PETER tells Hirsch that PETER is in trouble.

131. On or about July 25, 1994, at approximately 2:02 p.m., PETER called Hirsch and asked Hirsch what was happening. Hirsch told PETER that he was in a meeting and that he would call PETER back in one-half hour. PETER said that he was in a "very difficult situation." Hirsch said that he understood and PETER asked Hirsch to please stay in touch because he was "in a situation between life and death here."

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LEIFER and SPENCE discuss SPENCE's account and receiving loads of cash.

132. On or about July 26, 1994, at approximately 7:50 a.m., SPENCE spoke to LEIFER by telephone and said that he was expecting some "stuff" that day and some stuff at the end of the week. LEIFER said that the "140 guy" was hounding him about the money, but that he had it and had not done anything with it. Later in the conversation, SPENCE said that he wanted to get that thing taken care of, and asked if LEIFER had put anything in SPENCE's personal account. LEIFER responded that he had last week and that he would have to look at the date.

133. On or about July 29, 1994, at approximately 8:19 a.m., LEIFER called SPENCE, who said that he was expecting a package that afternoon and that he should be getting funds. SPENCE said that he had not gotten anything for over one week and then all of a sudden he had gotten bombarded. LEIFER then mentioned PETER. SPENCE said that there were two or three loads expected, and that he [SPENCE] would ship it right out.

KALANZ tells SPENCE that he is being investigating by Federal Authorities.

134. On or about July 29, 1994, at approximately 12:23 p.m., SPENCE called KALANZ at 431 East 165th Street and said that somebody at work approached him the previous day, and told him to watch out with respect to what he [KALANZ] was doing down there. SPENCE asked KALANZ "down where?" and KALANZ replied "down there." SPENCE then said "down here," and KALANZ replied "yeah." SPENCE asked KALANZ who had been watching the place, to which KALANZ replied "the Feds." KALANZ explained that his friend at work, who had the information, could not give him a lot, but that he [KALANZ] wanted to let SPENCE know. SPENCE asked KALANZ if he was okay, and KALANZ replied that he was. SPENCE told KALANZ to keep an eye out for himself.

OCAMPO and Hirsch discuss laundering money for BOTERO.

135. On or about August 5, 1994, at approximately 10:10 a.m., Hirsch called OCAMPO and said that "we cleared up the 150," and that he would send OCAMPO the documents in twenty minutes. OCAMPO replied, "this thing is screwing up the whole business." Hirsch said that "it" was all done and "it" was in the institution. Moments later, Hirsch said, "Freddy's [BOTERO] stuff is already in the institution," and, "send immediately the place where you want Freddy to receive his stuff." OCAMPO then said that he had to have "the fax number and everything." OCAMPO then said that "this" could be on a "daily basis." Hirsch ended the conversation by asking OCAMPO about the "warehouses" for that day and asking OCAMPO to call him at his office in twenty minutes.

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SPENCE, DILLUVIO and Hirsch
discuss receiving and sending money.

136. On or about August 5, 1994, at approximately 12:08 p.m., SPENCE called Hirsch and said that it was $489,944. SPENCE said that Hirsch should give him the exact count, and asked Hirsch to send him the fax. Hirsch said that he was going to tell "him" to send them the information to send the money out of there on Monday or Tuesday. SPENCE and Hirsch then calculated their percentage of this transfer. Hirsch said that SPENCE should send "the fifty" immediately.

137. On or about August 5, 1994, at approximately 12:11 p.m., SPENCE called DILLUVIO at the Morris Park Citibank and said that he needed something sent for fifty. DILLUVIO asked where it was going, and SPENCE replied that it was going to "United Bank, Houston Texas, Greenway Plaza Office, Houston, Texas, 77251-1370." SPENCE provided the routing number and the account number, and said that the account was named "Savannah Group." DILLUVIO verified the numbers. SPENCE asked DILLUVIO to send him a copy.

138. On or about August 5, 1994, at approximately 3:10 p.m., SPENCE called Hirsch and said that "the meat is in the sauce," and asked Hirsch to give him a call and tell him that the fifty [$50,000] was gone.

139. On or about August 8, 1994, at approximately 3:29 p.m., Hirsch called SPENCE and said that he needed the wire transfer number for the fifty grand. Hirsch said that OCAMPO had been calling all day and that he [OCAMPO] needed to show his people. SPENCE then placed a conference call to Citibank with Hirsch on the line and asked to "speak to my chick [DILLUVIO]," after which SPENCE told DILLUVIO to fax a wire confirmation to Hirsch.

PETER and OCAMPO talk to Hirsch about transferring funds.

140. On or about August 12, 1994, at approximately 8:24 a.m., PETER called Hirsch and said that he was reiterating that if "he" does not receive it, Hirsch will get PETER chopped into pieces. Hirsch told PETER not to worry, to which PETER replied that Hirsch did not know what kind of "S.O.B.s" he was dealing with. PETER said that his life was in Hirsch's hands, and that he needed money. Hirsch told PETER that PETER should send Hirsch a fax telling Hirsch where "he" was and how he [Hirsch] could get in touch with "him."

141. On or about August 15, 1994, at approximately 9:11 a.m., OCAMPO called Hirsch and told Hirsch that the bankers with whom he was doing business did not understand "this way" of doing business. Hirsch said that everything had gone fine "in terms of

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making the collection and turning over the funds. . . you have to understand the people we do business with, bankers and all, they don't understand craziness . . . and there is no way I can make them understand that." OCAMPO said that PETER had been calling every ten minutes because he was afraid, and that he [OCAMPO] was worried that Hirsch's pickup would be delayed. Hirsch said that he was "going to re-send this thing here to Fred [BOTERO] here in New York when I get in . . . so he should have it by afternoon . . . they put a tracer on it on Thursday . . . I'm going to re-send it." OCAMPO said that he knew Hirsch was under a lot of pressure, but asked Hirsch to get this one out to him, saying "it has to be today, I don't have any time." Hirsch said that "the guy took the merchandise to the bank today . . . this morning . . . it's in."

SPENCE, SALERNO and Hirsch arrange
to make a pick up from John Doe No. 3.

142. On or about August 15, 1994, at approximately 11:40 a.m., John Doe No. 3 called Hirsch and said that he was calling on behalf of Freddy and that he would like to meet. Hirsch asked whether John Doe No. 3 would meet Hirsch in Hirsch's office, and then gave John Doe No. 3 the address of Hirsch Weinig at 1540 Broadway, Suite 29-A. John Doe No. 3 said that he believed he had spoken to Hirsch before, and Hirsch asked whether John Doe No. 3 had been in the office [1540 Broadway, Suite 29-A], to which John Doe No. 3 replied that he had been there about a month and a half earlier with a couple of guys.

143. On or about August 15, 1994, at approximately 12:57 p.m., agents conducting surveillance observed John Doe No. 3 enter the office building located at 1540 Broadway, New York, New York. John Doe No. 3 left the building at approximately 1:33 p.m.

144. On or about August 15, 1994, at approximately 1:58 p.m., SPENCE called Hirsch, who told SPENCE that "the guys from Mr. Fred" [BOTERO] want to deliver this afternoon at 4:00 p.m., and they want to deliver to someone they have seen before." SPENCE said SALERNO had met the guys from Mr. Fred the last time.

145. On or about August 15, 1994, at approximately 2:05 p.m., SALERNO called SPENCE and SPENCE asked SALERNO if he remembered meeting a guy at 33rd Street by the tunnel who had given him a package. SALERNO acknowledged that he remembered. SPENCE asked SALERNO if he could do it later that day at around 4:00 p.m., to which SALERNO responded that he would make it his business to do it. SPENCE told SALERNO to call him back in five minutes.

146. On or about August 15, 1994, at approximately 2:10 p.m., Hirsch called SPENCE and said that "he" was going to beep

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SALERNO "right now to set it up." SPENCE replied that he had already alerted SALERNO. Hirsch said, "it's one," to which SPENCE replied that it would be no problem.

147. On or about August 15, 1994, at approximately 2:23 p.m., SALERNO called SPENCE, who instructed SALERNO to "be careful. There's a lot. Okay? Make it fast and quick. Like you did it last time -- beep me once, you get it."

148. On or about August 15, 1994, at approximately 2:23 p.m., SPENCE called Hirsch and said that SALERNO would conduct the pick up at 4:00 p.m. and that the money would be taken to the bank the next day. Hirsch said that "these are the guys we want to keep real happy." SPENCE said that he knew and that was why he wanted to make the pick up right away. SPENCE also said that he would make sure the other end was covered.

149. On or about August 15, 1994, at approximately 2:26 p.m., SPENCE called DILLUVIO at the Morris Park Citibank and asked her if she could handle a package. DILLUVIO asked how much, to which SPENCE responded "about a million." SPENCE said that it should be big, and DILLUVIO asked if SPENCE could get it there bright and early.

150. On or about August 15, 1994, at approximately 4:37 p.m., agents conducting surveillance observed John Doe No. 3 driving a blue Plymouth, which John Doe No. 3 parked in the vicinity of One West 28th Street, New York, New York. John Doe No. 3 then met with SALERNO and handed SALERNO a weighted bag, which SALERNO placed in the trunk of his car.

OCAMPO and Hirsch discuss transferring funds picked-up from BOTERO.

151. On or about August 16, 1994, at approximately 8:10 a.m., OCAMPO called Hirsch, who said that all of Mr. Fred's [BOTERO'] payments were going into the institution that morning. OCAMPO asked if Hirsch was going to send the payments to "the mountains," and Hirsch replied that he was. OCAMPO asked if it would take a long time to transfer, and Hirsch replied that it would not because he was not going to send it to WEINMANN. Hirsch said that OCAMPO should receive the money by Wednesday, and asked OCAMPO to send him a list of the new warehouses, so that he could process it immediately. Hirsch asked if OCAMPO was sure that PETER was going to see a couple of million dollars, to which OCAMPO replied, "Yes. We must go on with the project."

SPENCE and Hirsch discuss a magazine article about money laundering.

152. On or about August 17, 1994, at approximately 10:40 a.m., SPENCE called Hirsch, who asked SPENCE if he had read

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the article. SPENCE said, "the more and more you read about this stuff," it is incredible. Hirsch said that he read it as a good thing, and SPENCE said that he agreed. Hirsch said that the article revealed the people "they" were looking for, and SPENCE said that the people they were looking for were those who do not "go back." SPENCE said that we were going back because we want everything. Hirsch agreed, and said "they are looking for -- targeting those transactions where people are running with $9,900." SPENCE then said that it was a whole different thing.[12]

OCAMPO and Hirsch discuss meeting in Zurich, Switzerland and sending information to the Organization's customers.

153. On or about August 18, 1994, at approximately 9:39 a.m., OCAMPO called Hirsch, who said that the Swiss banks needed to speak to a real person from Transglobal and that he would go to Zurich if OCAMPO wanted him to. OCAMPO asked why he had to go, to which Hirsch replied that OCAMPO needed to go so that they could talk about the rest of the plan. Hirsch told OCAMPO to "fax that paper to your people," to which OCAMPO replied that if he relayed that information, he [OCAMPO] was a dead man, and then reminded Hirsch about his [OCAMPO's] brother's situation.[13] Hirsch urged OCAMPO to send the fax. OCAMPO said that there were twenty different people to whom he was going to send the fax. Hirsch said that OCAMPO should send it to the people he thought were important, but should not give it to everybody. Hirsch said that "the good news is that all of the money is there -- all it needs is for me to be there to release it."

SPENCE purchases part of a mortgage company.

154. On or about August 19, 1994, at approximately 11:46 p.m., Hirsch called SPENCE and they discussed a letter that they received about SPENCE's purportedly stolen Mercedes, and a meeting with the insurance people in Florida. SPENCE said that he purchased twenty-five percent of a mortgage company, and that the purchase legitimized everything else.

OCAMPO and Hirsch discuss BOTERO.

155. On or about August 29, 1994, at approximately 12:54 a.m., OCAMPO called Hirsch and said that he was with "Mr.

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[12] The August 15, 1994 edition of The New Yorker contained an article entitled "COLOMBIAN GOLD," which discussed, among other things, the Cali Cartel's use of structuring and other methods to launder narcotics proceeds.

[13] During the course of the investigation, OCAMPO stated to Hirsch that his brother had been kidnapped and was being held hostage until certain of OCAMPO's debts were paid.

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Fred" [BOTERO] and that nobody was getting anything. Hirsch said that he wanted to speak to Mr. Fred, and OCAMPO replied that Mr. Fred did not want to talk, Mr. Fred wanted his money. OCAMPO then said Mr. Fred wanted to know where his funds were, that was all he wanted to know, otherwise Mr. Fred was going to stop everything.

156. On or about August 30, 1994, at approximately 9:16 a.m., OCAMPO called Hirsch and said that there were many problems to deal with. Hirsch asked, "did you track the sums, Paul? Did you track the money?" OCAMPO said that he had not. Hirsch said that "Fred's money left before the 26th, so I'm surprised it didn't show there yet," and said that OCAMPO should not to leave until "we find the money today." OCAMPO said that he had a plane to Germany in one and one-half hours, that he wanted to help PETER, but that he was out of ideas. Hirsch explained that in the future there would be options. Hirsch said that one option would be to have Transglobal "make its own payments straight from New York," in that case everybody would get their money the next day, as had been the case with the half-container from Mr. Fred. Hirsch and OCAMPO discussed the issue of Fred's money and Hirsch said "if you can remember the order, first went out the million two payment, then Fred's payment, then the second payment on the loan. Fred's money should have been there long ago. The third pay of the loan should have started to hit yesterday . . . Megabank payments for yesterday and Chase Manhattan Bank payments for yesterday were not loan payments." OCAMPO then asked, "we are sure now, . . . it is 201 and 203 right?" Hirsch responded, "and forty-five and fifty, exactly right."

An Unknown male arranges with Hirsch
for the Organization to pick-up money.

157. On or about September 2, 1994, at approximately 9:54 a.m., an unknown male ("UM-1") called Hirsch and asked for "Sammy." UM-1 asked Hirsch if he had heard that UM-1 was going to give him money, to which Hirsch replied that they were expecting the call from Sammy. UM-1 said that he would call back shortly, and Hirsch said they wanted to get "this" done fast.

158. On or about September 2, 1994, at approximately 10:40 a.m., OCAMPO called Hirsch and instructed Hirsch to use the name "Sammy" and to say that he [Hirsch] was acting on behalf of "Fred." OCAMPO said that if the guy asked Hirsch anything, Hirsch should tell him it was from Fred. OCAMPO also said that he believed "it" would happen very soon.

The Organization picks up approximately
$755,667 in cash and transfers it to the WEINMANNs.

159. On or about September 3, 1994, at approximately 10:12 a.m., UM-1 called Hirsch at 1540 Broadway, Suite 29-A, and

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said that he was the guy who Hirsch had spoken with the previous day. Hirsch told UM-1 that he never called back. UM-1 said that he had to find out who Hirsch was, and Hirsch said, "it's Fred" [BOTERO]. UM-1 said that if Hirsch had told him "it was Fred, I would have known right away," and then asked Hirsch if they could do it that day, to which Hirsch responded that they could. Hirsch asked where and if it was "one container," to which UM-1 responded that it was and asked Hirsch where he wanted to meet. Hirsch said that it could be in Manhattan or Queens. UM-1 said that it would be better in Manhattan.

160. On or about September 3, 1994, at approximately 10:22 a.m., Hirsch called SPENCE and said, "it's today. The guy will call back within a half-hour." Hirsch said that he just wanted to get SALERNO ready, and SPENCE said that SALERNO was ready. Hirsch asked SPENCE what type of car SALERNO would be driving, to which SPENCE said that it would be a black Oldsmobile. SPENCE then suggested that SALERNO and UM-1 talk and make arrangements for the money pick-up.

161. On or about September 3, 1994, at approximately 10:44 a.m., UM-1 called Hirsch at 1540 Broadway, Suite 29-A, and asked, "how about three o'clock?" Hirsch said, "okay, where?" UM-1 said "in the city." UM-1 then told Hirsch to take the last two numbers of his [Hirsch's] cellular telephone number and subtract twelve, and that it was that number and Fifth Avenue.[14] Hirsch said that Fifth Avenue was busy, and UM-1 asked about Broadway. Hirsch said that Broadway was better, that his [Hirsch's] guy's name was Gary [SALERNO] and that he would be driving a black Oldsmobile, and that the usual guys knew SALERNO. Hirsch said that SALERNO was a "dark looking guy, glasses, your guys know him, they've been meeting him on Third Avenue, but I told him it's good to change it." Hirsch further stated that SALERNO was reliable and prepared to move. UM-1 asked if SALERNO was tall, and Hirsch replied that SALERNO was about 5'10" tall, husky, wore glasses, and drove a black Oldsmobile. Hirsch told UM-1 that he [Hirsch] would tell SALERNO to wear a white shirt. Hirsch then asked UM-1 if UM-1 was going to go himself. UM-1 said that he was not going to go, but was going to send his guy. Hirsch told UM-1 that they should figure out which corner because Broadway was a big street, and UM-1 replied that it should be the corner with the telephone. Hirsch asked if there was only one telephone at that corner, and UM-1 indicated that there was a bank with a clock and a phone on the same corner.

162. On or about September 3, 1994, at approximately 10:53 a.m., Hirsch called SPENCE and said that it was going to

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[14] Investigation has revealed that Hirsch's cellular telephone number at that time was (917) 969-9666, and that the cross street being referred to was 54th Street.

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happen at three o'clock at 54th Street and Broadway in front of a bank with a clock, and that SPENCE should tell SALERNO to wear a white shirt and his glasses. Hirsch told SPENCE to remember that this was the same client but that they were dealing with different people who would probably take SALERNO to where it was. SPENCE asked if it would be a "container," and Hirsch responded that it would be a container for that day, and probably something on the following Monday.

163. On or about September 3, 1994, at approximately 3:00 p.m., agents conducting surveillance observed SALERNO driving a black Cadillac (the "Black Cadillac") in the vicinity of 54th Street and Broadway, New York, New York. SALERNO was wearing a white shirt and dark glasses. At approximately 3:09 p.m., two unidentified men ("UM-2" and "UM-3") were observed watching SALERNO in the Black Cadillac. UM-2 walked by SALERNO, who had stopped in the Black Cadillac, and went to a payphone on the corner of 54th Street and Broadway. While at the payphone, UM-2 nodded to UM-3, who entered the passenger side of Black Cadillac with SALERNO. At approximately 3:14 p.m., SALERNO and UM-3 drove to 53rd Street near Eighth Avenue, where UM-3 exited the Black Cadillac and entered a parking garage. At approximately 3:17 p.m., UM-3 exited the garage in a white Toyota (the "White Toyota") and pulled up behind SALERNO in the Black Cadillac. UM-3 removed a large black duffle bag from the trunk of the White Toyota. UM-3 and SALERNO brought the duffle bag to the trunk of SALERNO's Black Cadillac. SALERNO then departed in the Black Cadillac.

164. On or about September 6, 1994, at approximately 8:36 a.m., agents conducting surveillance observed SALERNO carry a large black duffle bag into the Morris Park Citibank.

165. On or about September 6, 1994, at approximately 12:56 p.m., DILLUVIO called EZELL at 431 East 165th Street and said that the count for the money dropped off that morning was $755,667, and that it should have been $765,000. EZELL said that she would let SPENCE know if he called.

166. On or about September 6, 1994, at approximately 1:34 p.m., SPENCE called EZELL at 431 East 165th Street and asked if she had heard from the bank. EZELL replied that the total amount was $755,667.

167. On or about September 7, 1994, at approximately 10:09 a.m., Hirsch called SPENCE and said that all had gone okay, that the figure was 757, and that they were always "right on" with the count. Hirsch said that he would call OCAMPO to see what they had to do with it.

168. On or about September 7, 1994, at approximately 10:28 a.m., Hirsch called OCAMPO and said that the exact count

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was $757,854 and that there was a wire on the way to RACHEL WEINMANN. Hirsch and OCAMPO discussed various quantities of money, and Hirsch said that he would send $150,000 and $350,000 to a "warehouse." OCAMPO told Hirsch to send $150,000 to the second warehouse, and Hirsch asked, "Do you mean the Nation Bank of Georgia?" OCAMPO said that he did. OCAMPO said that the other warehouse was "Ocean Bank," where the Multi-Exchange Corp. owed money. OCAMPO said that the Nation Bank of Georgia company was "RHM Trust," and that Hirsch should send $150,000 to the Nation Bank of Georgia along with $107,000.

OCAMPO and Hirsch discuss wire transfers and what OCAMPO should say if questioned by the authorities.

169. On or about September 7, 1994, at approximately 12:37 p.m., OCAMPO called Hirsch at 1540 Broadway, Suite 29-A, and said that he had a fax confirming $150,000 that was done on August 31, 1994. OCAMPO said that he could not get out of Germany until the problem with PETER in Kazakhstan was resolved. Hirsch said that they would have to get a payment to Guardian Funding, and that their "story" was that Guardian Funding was to pay cash in Kazakhstan. Hirsch told OCAMPO that he would tell FIBI Bank that the last payment to FIBI Bank was a mistake. Hirsch said that to stop a wire transfer one had to either say it was a mistake or that it was in some way fraudulent, and that he [Hirsch] did not want to say it was fraudulent because it was the WEINMANN's account "over there" [in Switzerland].

170. On or about September 7, 1994, at approximately 2:20 p.m., Hirsch called OCAMPO, who said, "[i]f the authorities ever ask," and was interrupted by Hirsch, who said, "I understand." OCAMPO explained that he was worried that if he was ever questioned by the authorities he would not know what to say, and that the authorities would not accept OCAMPO's answers to their questions. Hirsch said that OCAMPO would have to wait until they had devised an explanation for the source of the funds to be provided to the authorities in connection with the seizure cases. Hirsch said that it was not illegal to do cash business, but that you needed a reasonable, normal explanation for the way the business was being conducted.

SPENCE and Hirsch arrange to pick-up $1,000,000.

171. On or about September 13, 1994, at approximately 12:46 p.m., Hirsch called SPENCE and said that there would be $1 million, consisting of $400,000 that day and $600,000 the following day. Hirsch described a woman named "Gigi" and said that the pick-up would take place at 3:00 p.m. on the south-west corner of 59th Street and Third Avenue, New York, New York, in front of a delicatessen. Hirsch said that Gigi would be wearing a green skirt and a green and white top, and that she would be

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looking for Gary [SALERNO]. SPENCE asked if she would have "it," and Hirsch replied that she would.

172. On or about September 13, 1994, at approximately 1:00 p.m., agents conducting surveillance observed an unidentified male ("UM-4") and unidentified female ("UF") enter a grey Pontiac (the "Grey Pontiac") at the intersection of 45th Street and Broadway, New York, New York, the same block on which the offices of Hirsch Weinig are located. At approximately 2:30 p.m., UF and a second unknown male ("UM-5") placed a large paisley travel bag in the trunk of the Grey Pontiac in the vicinity of 111 Ellwood Street, New York, New York. At approximately 3:25 p.m., UF, UM-4 and UM-5 parked the Grey Pontiac in the Fresh Meadows Shopping Plaza, Queens, New York. UF, UM-4 and UM-5 left the Grey Pontiac and entered a K-mart Department Store. Approximately twenty minutes later, agents then sought to locate UF, UM-4 and UM-5 but could not find them. A check of Department of Motor Vehicle ("DMV") records revealed that the windshield registration sticker on the Grey Pontiac was listed as having a different license plate from the one displayed on the Grey Pontiac at that time. At approximately 8:45 p.m., agents seized the Grey Pontiac. A search of the vehicle revealed a large paisley travel bag containing bundles of United States currency totalling approximately $395,697.

173. On or about September 13, 1994, at approximately 3:20 p.m., SPENCE called Hirsch and said that "our person" [SALERNO] was at the "deli," and that it was then 3:20 p.m. At approximately 3:58 p.m., SPENCE again called Hirsch and said that "Gary" [SALERNO] was still waiting at the delicatessen.

VALENCIA threatens Hirsch.

174. On or about September 14, 1994, at approximately 3:41 p.m., VALENCIA called Hirsch at 1540 Broadway, Suite 29-A, from Colombia. Hirsch said that VALENCIA would have the money by that Friday or the following Monday, and VALENCIA replied that both her life and OCAMPO's life were in danger. VALENCIA explained that she owed "the people" $425,000 that she had entrusted to OCAMPO and Hirsch. VALENCIA said that PETER was going to get herself, OCAMPO, and their children killed, and accused Hirsch of having sent false papers concerning the transfer of money that was never in fact transferred. VALENCIA said that she did not want to have to send someone to Hirsch's office, and that she was powerful in Colombia and could arrange to send people after Hirsch.

Hirsch explains payment problems to BOTERO.

175. On or about September 14, 1994, at approximately 4:57 p.m., Hirsch called OCAMPO, who said that they needed to speak to three people and that he [OCAMPO] wanted to start with

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BOTERO. Hirsch and OCAMPO then called BOTERO in Colombia and included him in the conversation. Hirsch said that BOTERO would have his money by that Friday, that PETER was causing problems with banks in Switzerland, and that Hirsch was therefore having problems getting BOTERO's money out of Switzerland. BOTERO asked if the problem was a legal problem or an internal problem, and Hirsch replied that it was an internal problem. BOTERO explained that he was concerned because he could not pay his [BOTERO's] customers.

VALENCIA claims to be being held at gun point and again threatens Hirsch.

176. On or about September 14, 1994, at approximately 5:27 p.m., Hirsch called OCAMPO, who said that PETER's dealings had gotten VALENCIA in trouble. Hirsch and OCAMPO called VALENCIA in Colombia and included her in the conversation. VALENCIA said that she did not want explanations, she just needed the money for "the people." VALENCIA said, "give me that money or you know what's going to happen to you!" VALENCIA explained that "he" was coming to take her somewhere until she paid "his" money, and that there were two men with guns standing beside her at that moment. VALENCIA handed the telephone to an unknown male, who asked OCAMPO in Spanish what the problem was. OCAMPO said that the problem was caused by "Renee" [PETER] and that he [OCAMPO] and the lawyer [Hirsch] were trying to rectify the problem. Hirsch proposed removing "Renee" [PETER] from the process, and getting a letter of credit for a large amount of money to cover the outstanding funds owed. VALENCIA complained about the nine month delay, and asked Hirsch why he could not get money from the lawsuits. Hirsch said that the lawsuits took time, and reiterated his proposal of obtaining a letter of credit. VALENCIA explained that she had finished listening to excuses and that she wanted the money the following day.

OCAMPO and Hirsch explain payment problems to LOPEZ.

177. On or about September 14, 1994, at approximately 5:53 p.m., Hirsch and OCAMPO called LOPEZ. OCAMPO participated in the conversation and acted as an interpreter for Hirsch and LOPEZ. Hirsch and OCAMPO explained that "Renee" [PETER] rerouted the payments, and that they should not be held responsible for PETER's conduct. Hirsch invited LOPEZ to his office to discuss things, and LOPEZ inquired about the lawsuit stemming from the April seizures [which, in fact, never occurred]. Hirsch and OCAMPO explained that LOPEZ could call anytime to find out how the seizure-related lawsuits were progressing. OCAMPO explained that LOPEZ wanted assurances from Hirsch that he [LOPEZ] would have a facsimile with confirmations by that Friday, and Hirsch said that he would.

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178. On or about September 14, 1994, at approximately 6:13 p.m., Hirsch called OCAMPO, who explained that they had contacted three people out of approximately twenty to whom money was owed. Hirsch asked OCAMPO for an assurance that no one was on the way to kill him [Hirsch], and OCAMPO said that he [OCAMPO] thought that things had been diffused for the present time. Hirsch explained how truthful he [Hirsch] had been with everyone, and OCAMPO said that the truth may be more dangerous than lies. OCAMPO said that he might be killed when the truth was exposed because he had run out of excuses for PETER and because he had taken responsibility for this mess.

VALENCIA threatens Hirsch's life.

179. On or about September 15, 1994, DEA's New York Office was informed that VALENCIA and others in Colombia had discussed kidnapping and killing Hirsch and his family because of money the Organization owed to VALENCIA. DEA New York learned that VALENCIA had said that she wanted to have Hirsch or a member of his family kidnapped until payment was made, and then Hirsch and his family would be killed. In addition, DEA New York learned that on or about September 15, 1994, VALENCIA had hired assassins who were waiting for Hirsch to arrive at his office at 1540 Broadway, New York, New York.

OCAMPO and Hirsch discuss monies owed.

180. On or about September 16, 1994, at approximately 7:00 p.m., Hirsch called OCAMPO, who said that he had been able to calm down VALENCIA. OCAMPO said that VALENCIA assured him that PETER would pay for everything he had done and that once he had done so, VALENCIA would give all her "support" to Hirsch. OCAMPO said that they should pay the dangerous people back first and that RACHEL WEINMANN would get her money after everyone else was paid back first. OCAMPO and Hirsch then discussed money owed to VALENCIA, LOPEZ, and BOTERO. OCAMPO said that these people went to Hirsch's office and that "they will pull your lungs out." OCAMPO also said that his brother was still being held hostage.

SPENCE and Hirsch discuss threats and how to proceed.

181. On or about September 18, 1994, at approximately 11:10 p.m., Hirsch called SPENCE and said that he had received a call from VALENCIA in which she threatened to send someone from Colombia to cut him [Hirsch] and his family to pieces. SPENCE said that OCAMPO was not telling Hirsch the whole story because "the people" would not have come after Hirsch unless OCAMPO had told them things beyond what he had told Hirsch. SPENCE recommended that they pay these people and stop doing business with them. Hirsch asked SPENCE if he ever realized that these people could be like this, and SPENCE responded, "Sure, I've been telling you that." SPENCE suggested that Hirsch tell VALENCIA

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that they do things professionally, that they send it out, that they do not steal it, and that if VALENCIA had problems she should contact PETER and OCAMPO. SPENCE then said that he told WEINIG that he [SPENCE] sent everything he received. SPENCE asked Hirsch if he got his hand stuck in the "cookie jar?" Hirsch replied that there was no money that had not been sent. SPENCE said that it was time to end it, and that they should "just be grateful for the stuff that's sitting there." SPENCE said that he would contact the Swiss bank to have Hirsch's money wired into SPENCE's account, and then wire the money out to VALENCIA.

OCAMPO and PETER talk to Hirsch about money owed.

182. On or about September 20, 1994, at approximately 3:25 p.m., Hirsch called OCAMPO and they discussed payments to VALENCIA, LOPEZ and BOTERO. OCAMPO said that BOTERO was their most important customer, and asked Hirsch not to tell PETER about the threats. OCAMPO explained that Hirsch should focus on BOTERO and that PETER would feel the pressure.

183. On or about September 20, 1994, at approximately 6:00 p.m., Hirsch called PETER and they had a conversation in which they discussed, in both English and Hebrew, the money that they owed. During the conversation, PETER stated that they owed $9 million in seized money plus penalties and interest.

WEINIG, SPENCE and Hirsch begin to pay back VALENCIA.

184. The CS advised me that on or about September 20, 1994, WEINIG gave Hirsch a cardboard box containing approximately $200,000 in United States currency to pay VALENCIA. The next day, on or about September 21, 1994, at approximately 10:35 a.m., agents conducting surveillance at the Morris Park Citibank observed EZELL and Hirsch enter the bank with a brown bag and leave the bank approximately ten minutes later without the box.

185. On or about September 22, 1994, at approximately 5:00 p.m., Hirsch called WEINIG in WEINIG's office at 1540 Broadway, Suite 29-A. WEINIG said that BOTERO had called and then provided BOTERO's beeper and telephone numbers to Hirsch. WEINIG and Hirsch then discussed monies owed to certain Colombians, including BOTERO, and WEINIG told Hirsch that he had spoken to SPENCE and that SPENCE had assured him that approximately $200,000 that WEINIG and Hirsch had given to SPENCE for deposit had been sent to VALENCIA.[15] WEINIG also said that

[15] On or about September 21, 1994, DEA agents conducting surveillance observed Hirsch and EZELL entering the Morris Park Citibank in possession of a box containing approximately $200,000 in United States currency, and observed them leaving shortly

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he had checked the Citibank account [the Transglobal account into which the money had been deposited and had discovered t the money was still in the account, in response to which Hirs stated that he was worried that SPENCE had not sent the money. WEINIG then told Hirsch in substance not to worry because they could pay down the debt to VALENCIA using money from accounts in Switzerland if necessary, to which Hirsch replied that the money in Switzerland was not theirs.[16] WEINIG then said that they had money in escrow accounts and that they could send directly from their office if necessary.

SPENCE meets UC, who asks SPENCE to return $500,000 or 50 kilograms of merchandise.

186. On or about September 22, 1994, UC and two other undercover agents met with SPENCE at his Florida residence. UC told SPENCE that he wanted the $500,000 in cash that SPENCE had lost returned to him or fifty kilograms. SPENCE said that he did not handle merchandise [cocaine], and that he would pay UC the money.

187. On or about September 22, 1994, at approximately 7:05 p.m, Hirsch called SPENCE, who said that three guys visited him, handed him items taken from his Mercedes, and asked for the "stuff" or the $500,000. Hirsch asked if they were nasty, and SPENCE replied that they were polite. Hirsch asked if they were Colombian, and SPENCE indicated that they were. SPENCE said that he expected WEINIG and Hirsch to each pay a one-third share of the $500,000, and that either WEINIG or Hirsch had to take a ride down to Florida [transport the money to SPENCE].

188. On or about September 24, 1994, UC and the two other undercover agents met SPENCE at a restaurant parking lot, where SPENCE gave UC and the two other undercover agents two bags containing $500,000. During the meeting, SPENCE said that it was not his fault the money had been seized, explaining that he had wanted to pick up the money in a hotel where it was not unusual for people to enter and exit with suitcases and where no one could observe the exchange. SPENCE said that he considered himself "an expert in the money laundering world." SPENCE suggested that UC not tell the Colombians for whom UC was working that SPENCE had repaid $500,000 so that SPENCE could keep the money and so that UC could get 50 kilos of cocaine. SPENCE then provided UC with advice on how to launder money and explained how

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thereafter without the box.

[16] This investigation has revealed that WEINIG and Hirsch maintain two numbered accounts at Bank Leumi in Switzerland, the aggregate balance of which at the time of this conversation was approximately $320,000.

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he avoided detection, including using "Federal Express" to send cash. In a telephone conversation later that day, SPENCE said that UC should hide his black Mercedes because he [SPENCE] had filed an insurance claim and did not want the car to re-appear.

HERMAN and Hirsch discuss HERMAN'S past money laundering and doing more business in the future.

189. On or about September 28, 1994, at approximately 9:59 p.m., Hirsch called HERMAN and said that they were going to pick up two and one-half containers and that this could become a regular thing. HERMAN said that he could handle one container per week, and then asked Hirsch "what is our deal?" Hirsch replied that he and HERMAN would each take 4 percent. HERMAN asked why they were not getting 10 to 12 percent, and Hirsch replied that they would each get $40,000 per container and that HERMAN should be able to pay LEON SHULUM WEINMANN from his (HERMAN's) share. HERMAN asked about PETER, and Hirsch explained how PETER had left him (Hirsch) with the problem of paying off monies that had not been paid. HERMAN said that they should take 10 percent, not eight percent.

190. On or about September 29, 1994, at approximately 11:27 a.m., Hirsch called HERMAN and said that none of the money could be diverted, not even if PETER gave LEON SHULUM WEINMANN and RACHEL WEINMANN instructions to divert it. HERMAN said that he had laundered eleven containers [$11 million] before he began working with SPENCE and Hirsch, of which seven containers [$7 million] had gone through. Hirsch and HERMAN then agreed that when they had met with the WEINMANNs,[17] the WEINMANNs had acknowledged having moved between $70 million and $100 million with PETER during the previous year.

The Colombian National Police Arrests OCAMPO.

191. On or about September 29, 1994, the Colombian National Police attempted to arrest several subjects of an investigation they were conducting. OCAMPO and Michael Johnson were arrested by the Colombian National Police and have been detained. VALENCIA was located, but was subsequently released. BOTERO is currently a fugitive.

JULIANA LNU contacts Hirsch on behalf of BOTERO.

192. On or about September 29, 1994, at approximately 11:55 a.m., JULIANA LNU called Hirsch and said that she was

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[17] This meeting, which occurred between on or about January 31, 1994 through on or about February 2, 1994, is discussed above at Paragraph 34.

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contacting him on behalf of "Mr. Fred" [BOTERO]. JULIANA LNU said that Hirsch should deal only with her with respect to BOTERO.

193. On or about September 29, 1994, at approximately 9:15 p.m., JULIANA LNU called Hirsch and said that OCAMPO and MICHAEL LNU had big problems and are not able to talk to BOTERO. JULIANA LNU said that BOTERO "is the principal head here in Colombia and he is the only person -- the only person who can give you security is Fred." Hirsch asked JULIANA LNU to assure him that certain people did not want to kill him, and JULIANA LNU replied, "the only person that really that can kill you is Fred [BOTERO]."

WEINIG and Hirsch discuss SPENCE, VALENCIA and BOTERO.

194. On or about September 30, 1994, at approximately 11:28 a.m., Hirsch called WEINIG at WEINIG's office at 1540 Broadway, Suite 29-A, and said that BOTERO was the principal of everyone in Colombia. Hirsch then explained the money problems arising from the debt owed to BOTERO, and WEINIG acknowledged the problem. WEINIG then said, "listen, let's not talk about this on the phone," and Hirsch responded by asking WEINIG for the number of WEINIG's private telephone line at the office. WEINIG then provided the number and stated that he did not believe his private line was any more secure. Hirsch then said that the checks had been dropped off and asked if WEINIG had photocopied them. WEINIG then stated that he had not photocopied the checks, but that he did have a list of where the checks had gone, and Hirsch asked WEINIG to put it in a facsimile to BOTERO. Hirsch said that he had explained the situation to VALENCIA with regard to BOTERO. Hirsch then told WEINIG that in a prior conversation he had with BOTERO, BOTERO had implied that OCAMPO might be dead, to which WEINIG replied, "let's not talk about it." WEINIG said that it would be interesting to see if Hirsch heard from VALENCIA again. WEINIG said that he had a long talk with SPENCE and said that Hirsch should not share information with him [SPENCE] because SPENCE was not being as cooperative as was expected. Thereafter, Hirsch further explained to WEINIG his positive views concerning BOTERO and WEINIG then asked whether BOTERO understood english, to which Hirsch replied that he spoke only a little english. WEINIG then stated "good, maybe we got a new client." WEINIG then said that Hirsch should ask SPENCE to get his girl on board in case they needed her. WEINIG expressed concern that they might have paid out too much money, and Hirsch replied that they would make it back in the future.

HERMAN and Hirsch discuss transferring funds through the LEON SHULUM WEINMANN and RACHEL WEINMANN.

195. On or about September 30, 1994, at approximately 12:51 p.m., Hirsch called HERMAN and asked him what he thought about their conversation with RACHEL WEINMANN the previous day.

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Hirsch said that HERMAN must ensure that once RACHEL H received the money that it would not be diverted. HE that it would not happen, that he was the boss, and t going to split his share with LEON SHULUM WEINMANN. Hir told HERMAN that OCAMPO and PETER had stolen millions of dolla from "these people," and that they were very angry. HERMAN asked, "what kind of business are these people really in," to which Hirsch replied money laundering, and HERMAN replied "that's a problem . . . is it drug money?" Hirsch replied, "assume yes," and then asked HERMAN if HERMAN recalled what SPENCE had told them months earlier in HERMAN's office concerning the source of the money. HERMAN stated that he had commented at the meeting that it was drug money, but that SPENCE had disagreed. HERMAN then recalled that SPENCE had at one point agreed with HERMAN that it was drug money. HERMAN ended the conversation by asking Hirsch, "so, when are you going to have stuff for me."

JULIANA LNU advises Hirsch to change his telephone numbers and adopts the alias "Bonnie".

196. On or about September 30, 1994, at approximately 2:00 p.m., JULIANA LNU called Hirsch and said that OCAMPO was having problems with smart policemen in Colombia. JULIANA LNU told Hirsch to get a new cellular telephone number, to no longer use his beeper with them, and to talk only with her. JULIANA LNU said that she would be using the name "Bonnie." JULIANA LNU said that BOTERO had taken care of VALENCIA. Hirsch said that he would get a new cellular telephone number and a new beeper number.

JULIANA tells Hirsch about OCAMPO's arrest.

197. On or about October 1, 1994, at approximately 7:0(p.m., JULIANA LNU called Hirsch and said that OCAMPO blamed Hirsch for the missing money. JULIANA LNU explained that OCAMPO said that Hirsch was a "pig," meaning that he was "police," and that he was responsible for OCAMPO's arrest. JULIANA LNU also said that OCAMPO was in jail in Colombia, that BOTERO felt betrayed by OCAMPO, and that BOTERO had $20 million worth of work that he would like Hirsch to handle.

Hirsch and SPENCE discuss JULIANA LNU, BOTERO and PETER.

198. On or about October 2, 1994, at approximately 9:24 a.m., Hirsch called SPENCE and said that he had spoken with BOTERO, who said that PETER and OCAMPO had been stealing money. Hirsch said that JULIANA LNU and BOTERO mentioned coming to New York to meet with Hirsch, and SPENCE said that he still had records. SPENCE asked about PETER, and Hirsch said that he told them all about PETER and wanted to help them find him. SPENCE said that he did not think it was a good idea to help them find PETER because "I think he can hurt us." SPENCE said that he did

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not think that WEINIG would continue in the business, and Hirsch responded by saying that WEINIG liked money and that he liked "shoe boxes," [cardboard boxes containing bundles of United States currency]. SPENCE then asked if WEINIG had given Hirsch money yet, to which Hirsch replied that he would get it the next day and that WEINIG "knows we have to pay off the Colombians . . . he knows we'll make it back."

WEINIG gives Hirsch a bag containing approximately $250,000.

199. On or about October 4, 1994, at approximately 10:21 a.m., agents conducting surveillance observed WEINIG leave 110 Riverside Drive carrying a black nylon bag, place the bag in the trunk of a car being driven by Hirsch, and then meet with Hirsch inside the car. The CS advised me that the bag contained approximately $250,000.

SPENCE tells WEINIG that he kidnapped someone and WEINIG assists SPENCE in accepting the payment extorted from the victim.

200. The CS advised me that on or about November 15, 1994, SPENCE informed WEINIG that he had kidnapped someone who had swindled him in a mortgage company deal. On or about November 16, 1994, WEINIG said that SPENCE was sending someone over to the offices of Hirsch Weinig to resolve the matter by having him make conveyances of cash and art to SPENCE. WEINIG stated that he wanted to leave the office before the person with the cash and art arrived and WEINIG assigned another lawyer at the firm to handle the conveyances. Later that day, FBI agents conducting surveillance outside Hirsch Weinig observed a person carrying paintings into the building in which the firm is located.

There Is Probable Cause To Believe That Defendants RICHARD SPENCE and HARVEY WEINIG Have Made Material False Statements To The DEA In Violation Of Federal Law

201. I hereby incorporate by reference herein paragraphs 30 through 33 and 96 above.

There Is Probable Cause To Believe That Defendant RICHARD SPENCE Has Committed Fraud Over An Interstate Wire In Violation of Federal Law

202. I hereby incorporate by reference herein paragraphs 82 through 90, 125 and 130 above.

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There Is Probable Cause To Believe That Defendant MICHAEL T. KALANZ Has Obstructed Justice In Violation of Federal Law

203. I hereby incorporate by reference herein paragraph 134 above.

204. WHEREFORE, the Government requests that arrest warrants be issued for the named defendants so that they be arrested and detained or bailed, as the case may be.

Search Warrants

In addition to the information set forth above, the following pertains to the Government's search warrant applications:

The November 16, 1994 Search of SALERNO's Residence

205. On or about November 16, 1994, a court authorized search warrant of SALERNO's residence, 207-19 Melissa Court, first floor apartment, Queens, New York, revealed that he possessed, among other things, a handgun, two rifles, ammunition, a bugging device, and a bag consisting of a garrotte, three pairs of handcuffs, ammunition, and a law enforcement badge bearing someone else's name. In addition, a black duffel bag with a scrap of paper containing handwritten numbers -- apparently a record of the cash once contained inside the bag -- was also recovered. The bag appears to be similar to those observed by surveillance agents being used on a consistent basis by members of the Organization.

The Locker and NYCPD Memo books

206. I have been informed that NYCPD procedures require police officers to maintain a memo book and to record in the memo book each day their activities for that tour of duty. NYCPD rules further require police officers to save all of their memo books for the duration of their employment with the NYCPD. In addition, according to Police Officers with experience in NYCPD investigations, a police officer completes one memo book and starts a new memo book every six to ten months or so, and police officers generally maintain their old memo books either in their home or in their precinct locker. Moreover, police officers generally maintain their most recent memo book in their precinct locker. Accordingly, in addition to the items listed in paragraph 210 below (excluding sub-paragraph (g)), there is probable cause to believe that KALANZ's memo books will be found in the Locker.

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The Organization's Record Keeping

207. As set forth above in Paragraphs 115, 119, 123-124, 135-136, 139-140, 153, 169 and 198, certain members of the Organization keep detailed records of their money laundering activity and frequently send each other information involving the Organization's activities by facsimile transmission. In addition, the CS has advised me that certain members of the Organization keep extensive records involving the Organizations money laundering activities.

CS information about Meeting House Lane

208. The CS informed me that in or about the Summer of 1994, WEINIG said that he stored at Meeting House Lane United States currency that represented money that WEINIG had obtained as a result of his participation in the Organization. At or about the same time, WEINIG mentioned that at one time he stored money in his well on the property of Meeting House Lane. In addition, the CS informed me that WEINIG has a facsimile machine at Meeting House Lane and that WEINIG has documents sent to him from Hirsch Weinig on that machine.

Items To Be Seized

209. Further, based upon my training, experience and participation in other money laundering investigations, I know that:

a. Money launderers frequently maintain large sums of cash, their share of the illicit proceeds they launder, outside the normal banking system.

b. In order to launder the proceeds of their unlawful conduct, money launderers typically establish a series of apparently innocent financial vehicles, including, but not limited to, bank accounts, businesses, real estate investments, stocks, bonds, safe deposit boxes, and other miscellaneous monetary investments. In order to keep account of such investments, they will usually maintain records in their homes and residences, their place of business, and/or the residences of their relatives and associates.

c. Money launderers maintain bank records, copies of facsimile transmissions, books, records, receipts, notes, ledgers, airline tickets, overnight and other mail service delivery records, money orders and other documents relating to the pick up, delivery, transportation, and wire transfer of the money they launder. Such documents are generally maintained where the money launderers have ready access to them, such as at the money launderers' residences or in their places of business.

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d. It is common for money launderers to maintain books, records, receipts, records of real estate transactions, bank statements and records, money drafts, letters of credit, money orders and cashier's checks, receipts, passbooks, bank checks, safe deposit keys and other items evidencing the obtaining, secreting, transfer and/or expenditure of money.

e. Money launderers take large sums of cash for themselves from their illegal activity, and commonly use cash to purchase cars, housing, clothing and jewelry. Money launderers frequently employ a number of techniques to conceal their ownership of assets purchased with the profits of their unlawful activities. The ownership of such assets is commonly concealed by placing the assets in a fictitious name or in the name of a nominee.

f. Money launderers often keep papers, airline tickets, notes, receipts, passports and other items relating to domestic and international travel where they have ready access to them.

g. Money launderers commonly have in their possession, that is on their person, at their residences and/or their places of business, firearms, including, but not limited to: handguns, pistols, revolvers, rifles, shotguns, machine guns and other weapons. Said firearms are used to protect and secure a money launderer's property and defend themselves against their narcotics trafficking customers. Such property may include, but is not limited to, large sums of cash, jewelry, books and records.

h. Money launderers commonly maintain addresses or telephone numbers in books or papers which reflect names, addresses, telephone numbers and/or paging numbers for their associates in the money laundering organization.

i. Money launderers commonly have photographs of themselves, their associates, and their property in their possession, their residence, or their places of business.

j. Money launderers commonly keep paraphernalia for counting, wrapping, conveying and concealing large quantities of cash. This paraphernalia includes but is not limited to money counters, various colored rubber bands, duffel bags, shopping bags, and cardboard boxes.

k. Money launderers routinely keep large sums of cash, books, records and other documents containing the names, addresses and/or telephone numbers of money laundering associates, firearms, ammunition, and other valuables which reflect the illegal proceeds that they launder, inside safes, key-lock strong boxes, suitcases, containers, safe-deposit boxes

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and other instruments, which are further secured by combination and/or key locks of various kinds, and secreted in distribution locations in their residences and places of business.

l. Money launderers frequently secrete caches of money in secure locations and/or places of business for ready access and to conceal these items from law enforcement authorities. In order to accomplish this, money launderers frequently store cash, and other items, in seemingly innocent containers, such as paper bags and cardboard boxes. Moreover, in order to accomplish this concealment, money launderers frequently build "stash" places within their residences or places of business. The types of items concealed by persons involved in large-scale money laundering, in their residences and places of business, include the items set forth in subparagraphs (a) through (k) above.

m. Subjects who participate in organized criminal activity for an extended period of time are likely to keep items and records such as those listed above -- most of which are innocent on their face -- for a considerable period of time.

210. Courts have recognized that unexplained wealth is probative evidence of crimes motivated at least in part by greed.

211. Based upon the foregoing, I respectfully submit that there is probable cause to believe that the Premises described in Paragraphs 12 through 15 above, except as indicated above, will contain:

a. United States currency, precious metals, jewelry and financial instruments, including stocks and bonds.

b. Books, records, receipts, notes, ledgers, records of real estate transactions, airline tickets, overnight and other mail service delivery records, money drafts, bank statements and records, wire transfer documents, letters of credit, money orders and cashier's checks, passbooks, bank checks, safe deposit box keys and other items evidencing the obtaining, secreting, transfer, concealment and/or expenditure of money.

c. Papers, tickets, notes, receipts, passports and other items relating to domestic and international travel.

d. Indicia of occupancy, residency and/or ownership of the Premises described above, including, but not limited to, utility and telephone bills, cancelled envelopes and keys.

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e. Weapons and ammunition.

f. Addresses or telephone numbers in books or papers which reflect names, addresses, telephone numbers and/or paging numbers for their associates in the money laundering organization.

g. Photographs, in particular, photographs of co-conspirators, assets and/or controlled substances.

h. Money laundering paraphernalia for counting, wrapping, conveying and concealing large quantities of cash, including, but not limited to, money counters, various colored rubber bands, duffel bags, shopping bags, and cardboard boxes.

i. Safes, key-lock strong boxes, suitcases, containers, safe-deposit boxes and other similar instruments, which may be further secured by combination and/or key locks of various kinds, and secreted in the Premises and the contents of such safes, key-lock strong boxes, suitcases, containers, safe-deposit boxes and other similar instruments.

j. Cashes or "stash" places built within the Premises, including under the floor boards, and the contents of such cashes or "stash" places.

212. WHEREFORE, the Government requests that search warrants issue for the premises described in Paragraphs 12 through 15 above.

Special Procedures To Protect Privileged Materials From Disclosure

213. To ensure that neither the attorney-client nor the work product privilege is violated inadvertently during the search of the law offices of Hirsch Weinig, located at 1540 Broadway, Suite 29-A, New York, New York, 110 Riverside Drive, and Meeting House Lane (the "Walled Locations"), for which authorization is sought herein, a "Chinese Wall" procedure will be followed to insure that neither Assistant United States Attorneys nor law enforcement agents working on the case will review materials seized from the Walled Locations until after they have been screened for material protected by the attorney-client or work product privilege. The procedures to be followed are as follows:

a. No Assistant United States Attorney and no law enforcement agent assigned to this investigation will be present at 1540 Broadway during the search of that location.

b. An Assistant United States Attorney not connected with the prosecution will be available by telephone to

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answer questions from the agents assigned to search the Walled Locations.

c. All materials seized from the Walled Locations pursuant to the aforementioned search of that location will be first reviewed, after being translated if necessary, by members of the Legal Unit of the FBI's New York Office, in conjunction with an Assistant United States Attorney unconnected with the prosecution of this case. The materials will be translated by persons who have not previously worked on translations in the case.

Conclusion

214. WHEREFORE, your deponent respectfully requests that arrest and search warrants be issued as applied for herein.

215. Given the confidential nature of this continuing investigation, I respectfully request that this affidavit and all papers submitted herewith be maintained under seal until this Court or another Court of competent jurisdiction orders otherwise.

JEFFREY DRUBNER
Special Agent
Federal Bureau of Investigation

Sworn to before me this
29th day of November, 1994

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT FILED DEC 13 1994 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

HARVEY WEINIG,
a/k/a "The Wing,"
TOHMES PETER,
a/k/a "Peter Thomas,"
a/k/a "Moti,"
a/k/a "Renee,"
JUAN GUILLERMO OCAMPO,
a/k/a "Paul,"
LEON SHULUM WEINMANN,
RACHEL WEINMANN,
MIGUEL OMAR GARRABITO BOTERO,
a/k/a "Mr. Fred,"
AMPARO HURTADO VALENCIA,
a/k/a "Helen,"
JULIANA LNU,
a/k/a "Bonnie,"
CARLOS LOPEZ,
GARY SALERNO,
ALEXANDER SCHWARTZ,
a/k/a "Mr. R. Rosenbaum,"
a/k/a "Rosenberg,"
DONALD J. HAYDEN,
LATCHEZAR CHRISTOV,
a/k/a "Lucky," and
MENASHE LEIFER,

Defendants.

INDICTMENT

94 Cr.

94 CRIM. 981

JUDGE DUFFY

MICROFILM DEC 13 1994 12:00 PM

The Grand Jury charges:

COUNT ONE

Conspiracy To Launder Narcotics Proceeds

1. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN,

EXHIBIT 9

MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and co-conspirators Richard Spence and Robert Hirsch not named as defendants herein, and others known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1956(a)(1)(B)(i), 1956(a)(2)(B)(i) and 1957 of Title 18, United States Code.

The Money Laundering Organization

2. From in or about 1991 up to and including on or about November 30, 1994, there existed an international money laundering organization (the "Organization") that laundered narcotics proceeds received from, among other places, the United States, Canada, and Puerto Rico.

Members of the Organization

During all times relevant to this Indictment:

3. Defendant HARVEY WEINIG, a/k/a "the Wing," was a lawyer licensed by, and practicing in, the State of New York, and was one of the principals, along with co-conspirator Robert Hirsch in the firm of Hirsch Weinig located at 1540 Broadway, Suite 29A, New York, New York. The Hirsch Weinig law firm was used in part by the Organization to facilitate and conceal its

illegal activities. WEINIG operated primarily out of his offices at the Hirsch Weinig law firm, where, among other things, he engaged in banking transactions on behalf of the Organization and consulted with co-conspirators Richard Spence, a/k/a "Dick," a/k/a "Charlie," and Hirsch about the Organization's activities.

4. Co-conspirator Robert Hirsch was also a lawyer licensed by, and practicing in, the State of New York. Hirsch operated primarily out of his offices at the Hirsch Weinig law firm, where he performed various tasks in furtherance of the Organization's activities.

5. Co-conspirator Richard Spence operated several businesses at 431 East 165th Street, Bronx, New York, which location was used in part by the Organization to further, and to conceal, its illegal activities. Spence was responsible for organizing the pick-up of narcotics proceeds, depositing the proceeds into bank accounts, and transferring the proceeds to various accounts via wire transfers.

6. Defendants TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," and JUAN GUILLERMO OCAMPO, a/k/a "Paul," operated primarily in Germany, where, among other things, they consulted with various members of the Organization, including defendants LEON SHULUM WEINMANN and RACHEL WEINMANN, and co-conspirators Richard Spence and Robert Hirsch.

7. Defendants LEON SHULUM WEINMANN and RACHEL WEINMANN, among other things, received transfers of funds in

Switzerland on behalf of the Organization and remitted the funds to bank accounts designated by the Organization's customers.

8. Defendants MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, operated in Colombia, where they were responsible for, among other things, ensuring that funds laundered by the Organization were eventually remitted to the Organization's customers.

9. Defendant GARY SALERNO, among other things, picked up and transported narcotics proceeds for the Organization.

10. Defendant ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenburg," travelled to various cities in the United States and abroad to pick up narcotics proceeds for the Organization and return the proceeds to New York City.

11. Defendants DONALD J. HAYDEN and LATCHEZAR CHRISTOV, a/k/a "Lucky," received narcotics proceeds and other cash in California that they shipped via overnight mail service to New York.

12. Defendant MENASHE LEIFER operated in New York, where, among other things, he transported narcotics proceeds and performed various tasks in furtherance of the Organization's activities.

Objects Of The Conspiracy

13. It was a part and an object of the conspiracy that HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and co-conspirators Richard Spence and Robert Hirsch not named as defendants herein, and others known and unknown to the Grand Jury, knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, unlawfully, wilfully and knowingly would and did conduct and attempt to conduct such financial transactions which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18, United States Code.

14. It was further a part and an object of the conspiracy that HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN,

MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and co-conspirators Richard Spence and Robert Hirsch not named as defendants herein, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly would and did transport, transmit and transfer funds from a place in the United States to and through a place outside the United States, knowing that the funds involved in the transportation, transmission and transfer represented the proceeds of some form of unlawful activity, and knowing that such transportation, transmission and transfer was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(2)(B)(i) of Title 18, United States Code.

15. It was further a part and an object of the conspiracy that HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and

co-conspirators Richard Spence and Robert Hirsch not named as defendants herein, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly would and did engage and attempt to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from specified unlawful activity, to wit, narcotics trafficking, in violation of Section 1957 of Title 18, United States Code.

The Means Used By The Defendants
And Their Co-conspirators To
Further The Objects Of The Conspiracy

16. From in or about 1991 up to and including on or about November 30, 1994, the Organization laundered tens of millions of dollars in cash that were the proceeds of narcotics trafficking.

17. The conspirators would and did pick up large quantities of cash narcotics proceeds from, among other places, on the streets and in hotel rooms in various cities throughout the United States, Puerto Rico, and Canada.

18. The conspirators would and did transport and send via overnight mail service money picked up in various cities throughout the United States, Puerto Rico, and Canada, to New York City where the money was deposited into bank accounts from which it was transferred by wire and otherwise to Europe and elsewhere.

19. The conspirators would and did take a portion of the money they laundered as payment of their fee, and would and

did remit funds to accounts designated by customers of the Organization.

20. The conspirators would and did seek to conceal the activities of the Organization from law enforcement authorities by, among other things, falsely claiming that funds seized by law enforcement authorities were derived from legitimate business transactions.

Overt Acts

21. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about October 6, 1993, ALEXANDER SCHWARTZ possessed bundles of United States currency totalling approximately $267,830 in Puerto Rico.

b. From on or about January 4, 1994, through on or about January 5, 1994, ALEXANDER SCHWARTZ possessed bundles of United States currency totalling approximately $1,857,103 in Houston, Texas.

c. On or about January 14, 1994, GARY SALERNO picked up bundles of United States currency totalling approximately $676,392 in Houston, Texas.

d. From on or about January 31, 1994, through on or about February 2, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, TOHMES PETER and Robert Hirsch, among others, met in Zurich, Switzerland.

e. On or about March 24, 1994, HARVEY WEINIG, Richard Spence and Robert Hirsch caused a claim of ownership to be filed with the DEA concerning $676,392 that had been seized from GARY SALERNO in Houston, Texas.

f. On or about May 25, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, whether funds could be transferred from one bank account to another without the source of the funds being traced.

g. On or about June 2, 1994, LATCHEZAR CHRISTOV and Richard Spence engaged in a telephone conversation during which CHRISTOV said, among other things, that he and DONALD J. HAYDEN had looked at the money, which was comprised of "fives, tens, twenties and even ones."

h. On or about June 3, 1994, MENASHE LEIFER and Richard Spence engaged in a telephone conversation during which, among other things, Spence gave MENASHE LEIFER his personal bank account number and told LEIFER that another member of the Organization was unhappy because he was being pushed out.

i. On or about June 22, 1994, Robert Hirsch engaged in a telephone conversation concerning the pick-up of approximately $850,000 in United States currency in Miami, Florida.

j. On or about June 23, 1994, Richard Spence met with a confidential informant in the parking lot of a Burger King Restaurant in Florida where Spence exchanged his Mercedes Benz

for a rental car that the confidential informant said contained $425,000 in its trunk.

k. From on or about June 28, 1994 through in or about June 30, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, TOHMES PETER and Robert Hirsch, among others, met in Zurich, Switzerland.

l. On or about July 11, 1994, MENASHE LEIFER and Richard Spence engaged in a telephone conversation during which, among other things, LEIFER said that he had put money in the bank and that Spence should determine whether it showed up the following morning.

m. On or about July 15, 1994, HARVEY WEINIG and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, federal wire transfer numbers and the fact that TOHMES PETER needed $1 million.

n. In or about July 1994, Richard Spence assisted by Robert Hirsch, provided false and fabricated information by telephone and facsimile machine to Allstate Insurance Company offices located in Fort Myers, Florida.

o. On or about July 18, 1994, DONALD J. HAYDEN and Richard Spence engaged in a telephone conversation during which they discussed, among other things, how Spence was stopped by the Police in Miami with "merchandise" in the car Spence was driving.

p. On or about July 21, 1994, MENASHE LEIFER and Richard Spence engaged in a telephone conversation during which

they discussed, among other things, LEIFER opening up a corporate bank account and finding someone to open the account for LEIFER because he did not want to give any personal identification.

q. On or about August 15, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that GARY SALERNO would conduct a pick up of United States currency later that day.

r. On or about August 15, 1994, GARY SALERNO picked up a bag and put it in his car in the vicinity of One West 28th Street in Manhattan.

s. On or about September 3, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that GARY SALERNO was ready to pick-up United States currency later that day.

t. On or about September 3, 1994, GARY SALERNO picked up a bag and put it in his car in the vicinity of 53rd Street and Eighth Avenue in Manhattan.

u. On or about September 7, 1994, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that money had been wired to RACHEL WEINMANN.

v. On or about September 14, 1994, AMPARO HURTADO VALENCIA and Robert Hirsch engaged in a telephone conversation during which, among other things, VALENCIA said that she was powerful in Colombia and VALENCIA threatened to send people to harm Hirsch.

w. On or about September 14, 1994, MIGUEL OMAR GARRABITO BOTERO, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, sending money to BOTERO.

x. On or about September 20, 1994, HARVEY WEINIG gave Robert Hirsch a cardboard box containing bundles of cash totalling approximately $200,000.

y. On or about September 29, 1994, JULIANA LNU and Robert Hirsch engaged in a telephone conversation during which JULIANA LNU said, among other things, that MIGUEL OMAR GARRABITO BOTERO was the principal in Colombia and that BOTERO was the only person who could kill Hirsch.

z. On or about September 30, 1994, HARVEY WEINIG and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, whether OCAMPO and others were dead.

aa. On or about October 4, 1994, HARVEY WEINIG gave Robert Hirsch a bag containing bundles of cash totalling approximately $248,920.

ab. On or about November 29, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, ALEXANDER SCHWARTZ and Robert Hirsch met at the Hirsch Weinig firm in Manhattan.

(Title 18, United States Code, Section 1956(h).)

COUNT TWO

Criminal Forfeiture

The Grand Jury further charges:

22. Paragraphs One through Twenty-One of this Indictment are incorporated and realleged herein.

23. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and co-conspirators Richard Spence and Robert Hirsch not charged as defendants herein, and others known and unknown to the Grand Jury owned and controlled properties, real and personal which were involved in the money laundering offense charged in Count One and are traceable to such properties. Such interests are subject to forfeiture to the United States pursuant Title 18, United States Code, Section 982(a)(1). Such forfeitable interests include, but are not limited to: (i) any and all interests held by HARVEY WEINIG, a/k/a "The Wing," in the assets of the Hirsch Weinig law firm, located at 1540 Broadway, Suite 29A, New York, New York, including but not limited to cash, checking accounts, savings

accounts, accounts receivable, trust and escrow accounts, any leasehold interest in Suite 29A, furniture, fixtures, books, and equipment; (ii) any and all interests held by HARVEY WEINIG, a/k/a "The Wing," in the CONTENTS OF ACCOUNT NUMBER 37175293, in the name of HIRSCH-WEINIG TRUST ACCOUNT, at Citibank, N.A.; and (iii) any and all interests held by HARVEY WEINIG, a/k/a "The Wing," in the CONTENTS OF ACCOUNT NUMBER 10.281, at Bank Leumi, located in Zurich, Switzerland.

24. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and co-conspirators Richard Spence and Robert Hirsch not charged as defendants herein, and others known and unknown to the Grand Jury owned or controlled properties, real and personal which constituted and were derived from the proceeds of the money laundering offense charged in Count One. Such forfeitable property includes, but is not limited to, monies in excess of $15 million involved in the money laundering offense charged in Count One.

25. HARVEY WEINIG, a/k/a "The Wing," TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, ALEXANDER SCHWARTZ, a/k/a "Mr. R. Rosenbaum," a/k/a "Rosenberg," DONALD J. HAYDEN, LATCHEZAR CHRISTOV, a/k/a "Lucky," and MENASHE LEIFER, the defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

26. If any of the property described in paragraphs Twenty-Three and Twenty-Four above as being subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(1), as a result of any act or omission of any of the defendants, (a) cannot be located upon the exercise of due diligence; (b) has been transferred to, sold to, or deposited with a third person; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; and/or (e) has been commingled with other property that cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1)(A), incorporating by reference Title 21, United States Code, Section 853(p), to

seek forfeiture of any other property of the defendants up to the value of the property described in clauses (a) through (e) above as being subject to forfeiture.

(Title 18, United States Code, Sections 982(a)(1) and 982(b)(1)(A)).

Selma Tenenbaum
FOREPERSON

Mary Jo White
MARY JO WHITE
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - :

HARVEY WEINIG, :
TOHMES PETER, :
a/k/a "Peter Thomas," :
a/k/a "Moti," :
a/k/a "Renee," :
JUAN GUILLERMO OCAMPO, :
a/k/a "Paul," :
LEON SHULUM WEINMANN, :
RACHEL WEINMANN, :
MIGUEL OMAR GARRABITO BOTERO, :
a/k/a "Mr. Fred," :
AMPARO HURTADO VALENCIA, :
a/k/a "Helen," :
JULIANA LNU, :
a/k/a "Bonnie," :
CARLOS LOPEZ, :
GARY SALERNO and :
LATCHEZAR CHRISTOV, :
a/k/a "Lucky," :

Defendants. :

INDICTMENT

S4 94 Cr. 981 (KTD)

U.S. DISTRICT COURT FILED APR 20 1995 S.D. OF N.Y.

Count One

The Grand Jury charges:

Conspiracy To Launder Narcotics Proceeds

1. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-

EXHIBIT 10

conspirators Richard Spence and Robert Hirsch, not named as defendants herein, and others known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1956(a)(1)(B)(i), 1956(a)(2)(B)(i) and 1957 of Title 18, United States Code.

The Money Laundering Organization

2. From in or about 1991 up to and including on or about November 30, 1994, there existed an international money laundering organization (the "Organization") that laundered narcotics proceeds received from, among other places, the United States, Canada, and Puerto Rico.

Members of the Organization

During all times relevant to this Indictment:

3. Defendant HARVEY WEINIG was a lawyer licensed by, and practicing in, the State of New York, and was one of the principals along with co-conspirator Robert Hirsch in the firm of Hirsch Weinig, located at 1540 Broadway, Suite 29A, New York, New York. The Hirsch Weinig law firm was used in part by the Organization to facilitate and conceal its illegal activities. WEINIG operated primarily out of his offices at the Hirsch Weinig law firm, where, among other things, he engaged in banking transactions on behalf of the Organization and consulted with co-conspirators Richard Spence and Hirsch about the Organization's activities.

4. Co-conspirator Robert Hirsch was also a lawyer licensed by, and practicing in, the State of New York. Hirsch operated primarily out of his offices at the Hirsch Weinig law firm, where he performed various tasks in furtherance of the Organization's activities, including but not limited to arranging for the pick-up of narcotics proceeds at various locations in the United States, Puerto Rico and Canada, and transferring monies to various accounts via wire transfers.

5. Co-conspirator Richard Spence operated several businesses at 431 East 165th Street, Bronx, New York, which location was used in part by the Organization to further, and to conceal, its illegal activities. Spence was responsible for organizing the pick-up of narcotics proceeds, depositing the proceeds into bank accounts, and transferring the proceeds to various accounts via wire transfers.

6. Defendants TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," and JUAN GUILLERMO OCAMPO, a/k/a "Paul," operated primarily in Germany, where, among other things, they consulted with various members of the Organization, including defendants LEON SHULUM WEINMANN and RACHEL WEINMANN in Switzerland, defendants MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," and CARLOS LOPEZ in Colombia, and co-conspirators Richard Spence and Robert Hirsch in New York.

7. Defendants LEON SHULUM WEINMANN and RACHEL WEINMANN, among other things, received transfers of funds in

Switzerland on behalf of the Organization and remitted the funds to bank accounts designated by the Organization's customers.

8. Defendants MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," and CARLOS LOPEZ, operated in Colombia, where they were responsible for, among other things, arranging for the delivering of narcotics proceeds to members of the Organization and ensuring that funds laundered by the Organization were eventually remitted to the Organization's customers.

9. Defendant GARY SALERNO, among other things, picked up and transported narcotics proceeds for the Organization.

10. Defendant LATCHEZAR CHRISTOV, a/k/a "Lucky," along with Donald J. Hayden, a co-conspirator not named as a defendant herein, received narcotics proceeds in California and transferred those proceeds via overnight mail service to New York.

Objects Of The Conspiracy

11. It was a part and an object of the conspiracy that HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-conspirators Richard Spence and Robert Hirsch, not named as defendants herein, and others known and unknown, knowing that the property involved in certain financial transactions represented the proceeds of

some form of unlawful activity, unlawfully, wilfully and knowingly would and did conduct and attempt to conduct such financial transactions which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18, United States Code.

12. It was further a part and an object of the conspiracy that HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-conspirators Richard Spence and Robert Hirsch, not named as defendants herein, and others known and unknown, unlawfully, wilfully and knowingly would and did transport, transmit and transfer funds from a place in the United States to and through a place outside the United States, knowing that the funds involved in the transportation, transmission and transfer represented the proceeds of some form of unlawful activity, and knowing that such transportation, transmission and transfer was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful

activity, in violation of Section 1956(a)(2)(B)(i) of Title 18, United States Code.

13. It was further a part and an object of the conspiracy that HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," a/k/a "Moti," a/k/a "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-conspirators Richard Spence and Robert Hirsch, not named as defendants herein, and others known and unknown, unlawfully, wilfully and knowingly would and did engage and attempt to engage in monetary transactions in criminally derived property that was of a value greater than $10,000 and was derived from specified unlawful activity, to wit, narcotics trafficking, in violation of Section 1957 of Title 18, United States Code.

The Means Used By The Defendants
And Their Co-conspirators To
Further The Objects Of The Conspiracy

14. From in or about 1991 up to and including on or about November 30, 1994, the Organization laundered tens of millions of dollars in cash that were the proceeds of narcotics trafficking.

15. The conspirators would and did pick up large quantities of cash narcotics proceeds from, among other places, on the streets and in hotel rooms in various cities throughout the United States, Puerto Rico, and Canada.

16. The conspirators would and did transport and send, via overnight mail service, money picked up in various cities throughout the United States, Puerto Rico, and Canada, to New York City where the money was deposited into bank accounts from which it was transferred by wire to accounts designated by customers of the Organization in the United States and abroad.

17. The conspirators would and did take a portion of the money they laundered as payment of their fees.

18. The conspirators would and did seek to conceal the activities of the Organization from law enforcement authorities by, among other things, (i) utilizing overnight mail services to transfer cash narcotics proceeds, (ii) transporting cash narcotics proceeds from various cities to New York City concealed in suitcases and beneath their clothing, (iii) falsely claiming that funds seized by law enforcement authorities were derived from legitimate business transactions, (iv) speaking to one another in code, and (v) transferring monies through multiple bank accounts, including but not limited to a law firm trust account.

Overt Acts

19. In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about October 6, 1993, Alexander Schwartz, a co-conspirator not named as a defendant herein, picked up and possessed in a vest concealed under his clothing

bundles of cash totalling approximately $267,830 in San Juan, Puerto Rico. At the time of the pickup, Schwartz was using an alias, the person from whom he received the cash used only a first name, and no receipts or other documents were exchanged. Schwartz later lied to law enforcement officials about the purpose of his trip to Puerto Rico.

b. From on or about January 4, 1994, through on or about January 5, 1994, Alexander Schwartz picked up and possessed bundles of cash totalling approximately $1,857,103 in Houston, Texas. At the time of the pickup, Schwartz was using an alias, the person from whom he received the cash used only a first name, and no receipts or other documents were exchanged. Schwartz later lied to law enforcement officials about the purpose of his trip to Puerto Rico.

c. On or about January 14, 1994, GARY SALERNO picked up and possessed bundles of cash totalling approximately $676,392 in Houston, Texas. At the time of the pickup, the persons from whom SALERNO received the cash did not provide their names, and no receipts or other documents were exchanged.

d. From on or about January 31, 1994, through on or about February 2, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, TOHMES PETER and Robert Hirsch, among others, met in Zurich, Switzerland. Those who attended the meeting discussed whether the cash they were transferring was the proceeds of narcotics trafficking.

e. On or about February 14, 1994, HARVEY WEINIG, Richard Spence and Robert Hirsch caused a claim of ownership containing false information to be filed with the Drug Enforcement Administration ("DEA") concerning $267,830 that had been seized from Alexander Schwartz in San Juan, Puerto Rico.

f. On or about March 24, 1994, HARVEY WEINIG, Richard Spence and Robert Hirsch caused a claim of ownership containing false information to be filed with the DEA concerning $676,392 that had been seized from GARY SALERNO in Houston, Texas.

g. On or about May 25, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, whether funds could be transferred from one bank account to another without the source of the funds being traced.

h. On or about June 2, 1994, LATCHEZAR CHRISTOV, a/k/a "Lucky," met with a Special Agent of the Federal Bureau of Investigation ("FBI") working in an undercover capacity (the "UC") and a confidential informant working under the direction of the FBI ("CI-1"). At the meeting, among other things, the UC and CI-1 gave CHRISTOV a box with $100,000 in cash, in response to which CHRISTOV stated that he would ship the money immediately to SPENCE by overnight mail.

i. On or about June 2, 1994, LATCHEZAR CHRISTOV, a/k/a "Lucky," engaged in a telephone conversation with Richard Spence during which CHRISTOV said, among other things, that he

and Donald J. Hayden had looked at the money, which was comprised of "fives, tens, twenties and even ones."

j. On or about June 3, 1994, at approximately 10:27 a.m., LATCHEZAR CHRISTOV, a/k/a "Lucky," engaged in a conversation with Richard Spence in which CHRISTOV said, among other things, that he had sent out the packages, that he had taken $2,500 from the first box, and that he had counted the $100,000 with the UC and CI-1 and then placed it in a box.

k. On or about June 22, 1994, Robert Hirsch engaged in a telephone conversation concerning the pick-up of approximately $850,000 in cash in Miami, Florida.

l. On or about June 23, 1994, Richard Spence met with a confidential informant ("CI-2"), working under the direction of the DEA, in the parking lot of a Burger King Restaurant in Miami, Florida where Spence exchanged his Mercedes Benz for a rental car that CI-2 said contained $425,000 in its trunk.

m. From on or about June 28, 1994 through in or about June 30, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, TOHMES PETER and Robert Hirsch, among others, met in Zurich, Switzerland.

n. On or about July 13, 1994, HARVEY WEINIG, Richard Spence and Robert Hirsch caused claims of ownership containing false information to be filed with the DEA concerning $802,893 that had been seized from Alexander Schwartz and

$1,053,200 that had ben seized from Charles Bruno in Houston, Texas.

o. On or about July 15, 1994, HARVEY WEINIG and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, federal wire transfer numbers and the fact that TOHMES PETER needed $1 million.

p. In or about July 1994, Richard Spence assisted by Robert Hirsch, provided false and fabricated information by telephone and facsimile machine to Allstate Insurance Company offices located in Fort Myers, Florida.

q. On or about July 18, 1994, Donald J. Hayden and Richard Spence engaged in a telephone conversation during which they discussed, among other things, how Spence was stopped by the Police in Miami with "merchandise" in the car Spence was driving.

r. On or about August 15, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that GARY SALERNO would conduct a pick up of cash later that day.

s. On or about August 15, 1994, GARY SALERNO picked up a bag containing cash and placed it in his car in the vicinity of One West 28th Street in Manhattan.

t. On or about August 30, 1994, LATCHEZAR CHRISTOV, a/k/a "Lucky," met with the UC and CI-1. At the meeting, among other things, CHRISTOV said, in substance and in part, that the UC and CI-1 should not deliver money at CHRISTOV's

office, but should instead conduct the money exchange in the street. CHRISTOV explained that he had diplomatic license plates and that no one would bother him. CI-1 asked CHRISTOV if he could help them move "merchandise" inside coffee to Bulgaria and Romania, to which CHRISTOV replied that it would not be a problem.

u. On or about September 3, 1994, Richard Spence and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that GARY SALERNO was ready to pick up cash later that day.

v. On or about September 3, 1994, GARY SALERNO picked up a bag of cash and placed it in his car in the vicinity of 53rd Street and Eighth Avenue in Manhattan.

w. On or about September 7, 1994, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged in a telephone conversation during which they discussed, among other things, that money had been wired to RACHEL WEINMANN.

x. On or about September 14, 1994, AMPARO HURTADO VALENCIA and Robert Hirsch engaged in a telephone conversation concerning money transfers during which, among other things, VALENCIA said that she was powerful in Colombia and that she would send people to harm Hirsch if certain payments were not made.

y. On or about September 14, 1994, MIGUEL OMAR GARRABITO BOTERO, JUAN GUILLERMO OCAMPO and Robert Hirsch engaged

in a telephone conversation during which they discussed, among other things, transferring money to BOTERO.

z. On or about September 20, 1994, HARVEY WEINIG gave Robert Hirsch a cardboard box containing bundles of cash totalling approximately $200,000 for the purpose of transferring it to narcotics traffickers in Colombia.

aa. On or about September 29, 1994, JULIANA LNU engaged in a telephone conversation with Robert Hirsch during which JULIANA LNU said, among other things, that MIGUEL OMAR GARRABITO BOTERO was a principal in Colombia and that BOTERO was the only person who could kill Hirsch.

ab. On or about September 30, 1994, HARVEY WEINIG engaged in a telephone conversation with Robert Hirsch during which they discussed, among other things, whether OCAMPO and others were dead.

ac. On or about October 4, 1994, HARVEY WEINIG gave Robert Hirsch a bag containing bundles of cash totalling approximately $248,920.

ad. On or about October 28, 1994, HARVEY WEINIG and Robert Hirsch discussed making a cash pickup on behalf of MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," in Miami, Florida.

ae. On or about November 2, 1994, HARVEY WEINIG and Robert Hirsch discussed how they would demonstrate to the customers of the Organization that money collected by the Organization after April 1994 had actually been transferred.

af. On or about November 2, 1994, HARVEY WEINIG and Robert Hirsch discussed how Richard Spence would react if he learned that WEINIG and Hirsch could transfer money without Spence's assistance. During the same discussion, WEINIG stated that he, Hirsch and Spence had agreed to be partners, "a third, a third, a third."

ag. On or about November 29, 1994, LEON SHULUM WEINMANN, RACHEL WEINMANN, and Alexander Schwartz met with Robert Hirsch at the Hirsch Weinig law firm in Manhattan. During that meeting, LEON SHULUM WEINMANN, RACHEL WEINMANN, Hirsch and others discussed increasing the fees they charged for laundering money.

(Title 18, United States Code, Section 1956(h).)

Counts Two Through Twenty-two

Laundering Narcotics Proceeds

The Grand Jury further charges:

20. From on or about January 14, 1994 through on or about September 3, 1994, in the Southern District of New York and elsewhere, defendants HARVEY WEINIG, LEON SHULUM WEINMANN, RACHEL WEINMANN, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, unlawfully, willfully, and knowingly, did conduct and attempt to conduct such financial transactions, to wit, the movement, pickup, transportation, transfer, delivery, receipt and transmission of cash on the approximate dates and in the approximate amounts set forth below, which in fact involved the

proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity:

COUNT	APPROX. DATES OF FINANCIAL TRANSACTIONS	APPROX. AMOUNT OF FINANCIAL TRANSACTIONS	DEFENDANT(S)
Two	January 14-17, 1994	$ 676,392	SALERNO
Three	March 29-30, 1994	$ 590,567	CHRISTOV
Four	April 11-13, 1994	$ 273,000	CHRISTOV
Five	April 19, 1994-May 31, 1994	$ 800,000	WEINIG
Six	June 8, 1994	$ 695,000	L. WEINMANN, R. WEINMANN
Seven	June 9, 1994	$ 1,038,000	CHRISTOV
Eight	June 10, 1994	$ 970,000	L. WEINMANN, R. WEINMANN
Nine	June 19, 1994	$ 500,000	SALERNO
Ten	June 22, 1994	$ 465,000	L. WEINMANN, R. WEINMANN
Eleven	June 27, 1994	$ 850,000	WEINIG
Twelve	June 28, 1994	$ 261,312	WEINIG, L. WEINMANN, R. WEINMANN
Thirteen	June 29, 1994	$ 294,507	WEINIG, L. WEINMANN, R. WEINMANN
Fourteen	July 1, 1994	$ 240,180	WEINIG, L. WEINMANN, R. WEINMANN
Fifteen	July 7, 1994	$ 600,000	WEINIG
Sixteen	July 19, 1994	$ 930,000	WEINIG
Seventeen	July 19, 1994	$ 900,000	WEINIG

Eighteen	August 5, 1994	$ 490,000	SALERNO
Nineteen	August 9, 1994	$ 405,000	WEINIG
Twenty	August 15, 1994	$ 999,750	SALERNO
Twenty-one	August 22, 1994	$ 999,545	SALERNO
Twenty-two	September 3, 1994	$ 755,668	SALERNO

(Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2).

Counts Twenty-three Through Twenty-nine

Laundering Narcotics Proceeds

The Grand Jury further charges:

21. From on or about June 8, 1994 through on or about July 19, 1994, in the Southern District of New York and elsewhere, defendants HARVEY WEINIG, LEON SHULUM WEINMANN and RACHEL WEINMANN, unlawfully, willfully, and knowingly did transport, transmit, and transfer, and attempt to transport, transmit, and transfer, funds from a place in the United States to and through a place outside the United States knowing that said funds represented the proceeds of some form of unlawful activity, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, and knowing that such transportation, transmission and transfer were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of

specified unlawful activity:

COUNT	APPROX. DATES OF FINANCIAL TRANSACTIONS	APPROX. AMOUNT OF FINANCIAL TRANSACTIONS	DEFENDANT(S)
Twenty-three	June 8, 1994	$ 695,000	L. WEINMANN, R. WEINMANN
Twenty-four	June 10, 1994	$ 970,000	L. WEINMANN, R. WEINMANN
Twenty-five	June 22, 1994	$ 465,000	L. WEINMANN, R. WEINMANN
Twenty-six	June 28, 1994	$ 261,312	WEINIG, L. WEINMANN, R. WEINMANN
Twenty-seven	June 29, 1994	$ 294,507	WEINIG, L. WEINMANN, R. WEINMANN
Twenty-eight	July 1, 1994	$ 240,180	WEINIG, L. WEINMANN, R. WEINMANN
Twenty-nine	July 19, 1994	$ 900,000	WEINIG

(Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2).

Count Thirty

Laundering Narcotics Proceeds

The Grand Jury further charges:

22. Between on or about September 20, 1994 and on or about September 22, 1994, in the Southern District of New York, defendant HARVEY WEINIG, knowing that property involved in certain financial transactions represented the proceeds of some form of unlawful activity, to wit, narcotics trafficking, wire fraud and theft, unlawfully, willfully, and knowingly, did conduct and attempt to conduct such financial transactions, to wit, the delivery of approximately $200,000 in cash to Robert Hirsch, the deposit of said cash at a bank in New York and the

wire transmission of said cash from that bank to accounts abroad, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity.

(Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2).

Count Thirty-one

Laundering Narcotics Proceeds

The Grand Jury further charges:

23. On or about October 4, 1994, in the Southern District of New York, defendant HARVEY WEINIG, knowing that property involved in a financial transaction represented the proceeds of some form of unlawful activity, to wit, narcotics trafficking, wire fraud and theft, unlawfully, willfully, and knowingly, did conduct and attempt to conduct such financial transaction, to wit, the delivery of approximately $248,920 in cash to Robert Hirsch for deposit at a bank in New York and subsequent wire transmission of said cash from that bank to accounts abroad, which in fact involved the proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity.

(Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2).

Count Thirty-two

Interstate and Foreign Transportation of Stolen Money

The Grand jury further charges:

24. Between on or about September 20, 1994 and on or about September 22, 1994, in the Southern District of New York, defendant HARVEY WEINIG unlawfully, wilfully and knowingly did transport, transmit and transfer, and cause to be transported, transmitted and transferred, in interstate and foreign commerce money of the value of $5,000 and more, knowing the same to have been stolen, converted and taken by fraud, to wit, HARVEY WEINIG gave Robert Hirsch approximately $200,000 which WEINIG had obtained by theft and fraud for the express purpose of transferring the money in interstate and foreign commerce, and which money was thereafter transferred by wire from New York to accounts abroad.

(Title 18 United States Code, Sections 2314 and 2.)

Count Thirty-three

Interstate and Foreign Transportation of Stolen Money

The Grand jury further charges:

25. On or about October 4, 1994, in the Southern District of New York, defendant HARVEY WEINIG unlawfully, wilfully and knowingly did transport and cause to be transported in interstate and foreign commerce money of the value of $5,000 and more, knowing the same to have been stolen, converted and taken by fraud, to wit, HARVEY WEINIG provided Robert Hirsch with approximately $248,920 which WEINIG had obtained by theft and

fraud for the express purpose of transferring the money in interstate and foreign commerce, and which money was thereafter transferred by wire from New York to accounts abroad.

(Title 18 United States Code, Sections 2314 and 2.)

Count Thirty-four

Fraudulent Scheme

The Grand Jury further charges:

26. From on or about April 4, 1994 through on or about April 19, 1994, in the Southern District of New York and elsewhere, defendant HARVEY WEINIG, along with Robert Hirsch and Richard Spence, not named as defendants herein, unlawfully, willfully and knowingly did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purposes of executing such scheme and artifice, to wit, defendant HARVEY WEINIG, Robert Hirsch and Richard Spence devised and carried out a scheme and artifice pursuant to which they collected approximately $2.4 million on behalf of their clients and customers, fabricated a criminal indictment to falsely create the impression that Spence had been arrested and his assets frozen by the United States, and then stole from their clients and customers the money that had been collected rather than remitting

the money to those clients and customers.

(Title 18 United States Code, Sections 1343 and 2.)

Count Thirty-five

False Statement

The Grand Jury further charges:

27. On or about February 14, 1994, in the Southern District of New York and elsewhere, defendant HARVEY WEINIG, in a matter within the jurisdiction of the DEA, a department and agency of the United States, unlawfully, willfully and knowingly did falsify, conceal and cover up by trick, scheme, and device a material fact and did make a false, fictitious and fraudulent statement and representation, to wit, HARVEY WEINIG, along with Robert Hirsch and Richard Spence, not named as defendants herein, caused a claim of ownership to be filed with the DEA concerning the seizure of approximately $267,830 in cash from Alexander Schwartz by the DEA in San Juan, Puerto Rico, in which Spence falsely stated in a sworn affidavit prepared and drafted by and at the specific request of WEINIG and Hirsch, among other false statements, that the money seized by the DEA was owned by Spence and that it represented "a portion of the proceeds of payment for a sale of precious stones by [Spence] acquired and sold overseas."

(Title 18, United States Code, Sections 1001 and 2.)

Count Thirty-six

False Statement

28. On or about March 24, 1994, in the Southern District of New York and elsewhere, defendant HARVEY WEINIG, in a matter within the jurisdiction of the DEA, a department and agency of the United States, unlawfully, willfully and knowingly did falsify, conceal and cover up by trick, scheme, and device a material fact and did make a false, fictitious and fraudulent statement and representation, to wit, HARVEY WEINIG, along with Robert Hirsch and Richard Spence, not named as defendants herein, caused a claim of ownership to be filed with the DEA concerning the seizure of approximately $676,392 in cash from defendant GARY SALERNO by the DEA in Houston, Texas, in which Spence falsely stated in a sworn affidavit prepared and drafted by and at the specific request of WEINIG and Hirsch, among other false statements, that the money seized by the DEA was owned by Spence and that it represented "a portion of the proceeds due to [Spence] for a sale of precious stones acquired and sold overseas."

(Title 18, United States Code, Sections 1001 and 2.)

Count Thirty-seven

False Statement

29. On or about July 13, 1994, in the Southern District of New York and elsewhere, defendant HARVEY WEINIG, in a matter within the jurisdiction of the DEA, a department and

agency of the United States, unlawfully, willfully and knowingly did falsify, conceal and cover up by trick, scheme, and device a material fact and did make a false, fictitious and fraudulent statement and representation, to wit, HARVEY WEINIG, along with Robert Hirsch and Richard Spence, not named as defendants herein, caused two claims of ownership to be filed with the DEA concerning the seizure of approximately $802,893 in cash from Alexander Schwartz and approximately $1,053,200 in cash from Charles Bruno by the DEA in Houston, Texas, in which Spence falsely stated in a sworn affidavit prepared and drafted by and at the specific request of WEINIG and Hirsch, among other false statements, that the money seized by the DEA was owned by Spence and that it represented "a portion of the proceeds due to [Spence] for a sale of precious stones acquired and sold overseas."

(Title 18, United States Code, Sections 1001 and 2.)

Count Thirty-eight

Criminal Forfeiture

The Grand Jury further charges:

30. Paragraphs One through Twenty-nine of this Indictment are incorporated and realleged herein.

31. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a

"Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-conspirators Richard Spence and Robert Hirsch, not charged as defendants herein, and others known and unknown, owned and controlled properties, real and personal which were involved in the money laundering offense charged in Count One and are traceable to such properties. Such interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 982(a)(1). Such forfeitable interests include, but are not limited to, the following: (i) any and all interests held by defendant HARVEY WEINIG in the assets of the Hirsch Weinig law firm, located at 1540 Broadway, Suite 29A, New York, New York, including but not limited to cash, checking accounts, savings accounts, accounts receivable, trust and escrow accounts, any leasehold interest in Suite 29A, furniture, fixtures, books and equipment; (ii) any and all interests held by defendant HARVEY WEINIG in the CONTENTS OF ACCOUNT NUMBER 37175293, in the name of HIRSCH-WEINIG TRUST ACCOUNT, at Citibank, N.A.; and (iii) any and all interests held by defendant HARVEY WEINIG in the CONTENTS OF ACCOUNT NUMBER 10.281, at Bank Leumi, located in Zurich, Switzerland.

32. From in or about 1991 up to and including on or about November 30, 1994, in the Southern District of New York and elsewhere, HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM

WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and co-conspirators Richard Spence and Robert Hirsch, not charged as defendants herein, and others known and unknown, owned and controlled properties, real and personal, which constituted and were derived from the proceeds of the money laundering offense charged in Count One. Such forfeitable property includes, but is not limited to, monies in excess of $15 million involved in the money laundering offense charged in Count One.

33. HARVEY WEINIG, TOHMES PETER, a/k/a "Peter Thomas," "Moti," "Renee," JUAN GUILLERMO OCAMPO, a/k/a "Paul," LEON SHULUM WEINMANN, RACHEL WEINMANN, MIGUEL OMAR GARRABITO BOTERO, a/k/a "Mr. Fred," AMPARO HURTADO VALENCIA, a/k/a "Helen," JULIANA LNU, a/k/a "Bonnie," CARLOS LOPEZ, GARY SALERNO, and LATCHEZAR CHRISTOV, a/k/a "Lucky," the defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

34. If any of the property described in paragraphs Thirty and Thirty-one above as being subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(1), as a result of any act or omission of any of the defendants: (a) cannot be located upon the exercise of due diligence; (b) has been transferred to, sold to, or deposited with a third person; (c) has been placed beyond the jurisdiction of the Court; (d) has

been substantially diminished in value; and/or (e) has been commingled with other property that cannot be subdivided without difficulty; it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1)(A), incorporating by reference Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property described in clauses (a) through (e) above as being subject to forfeiture.

(Title 18, United States Code, Sections 982(a)(1) and 982(b)(1)(A)).

Lawrence Friedman
DEPUTY FOREPERSON

Mary Jo White
MARY JO WHITE
United States Attorney

Doc #173

U.S. DISTRICT COURT FILED MAY 09 1996 S.D. OF N.Y.

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v.

(S4) 94 Cr. 981(KTD)
(S2) 95 Cr. 167(KTD)

HARVEY WEINIG,

Defendant.

----------x

March 22, 1996
9:45 a.m.

Before:

HON. KEVIN T. DUFFY,

District Judge

APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
LEV DASSIN
MARK GOODMAN
Assistant United States Attorney

JOHN WING
Attorney for Defendant

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. (S4) 94 Cr. 981(KTD)
(S2) 95 Cr. 167(KTD)

HARVEY WEINIG,

Defendant.

----------x

March 22, 1996
9:45 a.m.

Before:

HON. KEVIN T. DUFFY,

District Judge

APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
LEV DASSIN
MARK GOODMAN
Assistant United States Attorney

JOHN WING
Attorney for Defendant

(Case called)

THE COURT: Has the government received the presentence report?

MR. GOODMAN: Mark Goodman for the government. Your Honor, we have.

THE COURT: Any objections to it?

MR. GOODMAN: No, your Honor.

THE COURT: Has the defense received the presentence report?

MR. WING: Yes, your Honor.

THE COURT: Have you reviewed it with your client?

MR. WING: Yes, your Honor.

THE COURT: Do you have any objections, now, to the final presentence report?

MR. WING: No, your Honor.

THE COURT: Does the government have anything to say in connection with sentence?

MR. GOODMAN: No, your Honor. We rest on our submissions to the Court.

THE COURT: Mr. Weinig?

MR. WING: Wing.

Your Honor, when my kids were young, I was familiar with that Sesame Street character Big Bird and a song he used to sing about how everybody makes mistakes, big

people, small people, as a matter of fact, law people. It's probably a different version of the doctrine of original sin, but Harvey Weinig made some business mistakes and he is here today facing the most important judicial decision in his life.

I have been in this business for about 30 years, eleven as a prosecutor and the rest as a defense lawyer, and I can honestly say I have never run into a case for a defendant like Mr. Weinig. I have prosecuted and defended all kinds of people, and I have never known a man who has spent so much of his life extending himself in a very selfless, altruistic way to help other people. Young kids, aging seniors, everyone in between, giving time, giving legal advice, giving money, and giving, in the best sense and without calculation about what it might get him down the road.

I have learned that over the last year and a half, and I have often wished that there was some way that you as the judge in this case could know Harvey Weinig the way I know him, or the way I have come to know him, because I don't think I am capable of adequately describing what sort of person this man is. I have taken a stab at it. Other people have written me letters on his behalf, but you can't really encompass a man's life, and that's what we are talking about, in letters, in a few words, even in a lot of

words.

When Truman died, Mary McCrory described him as a certifiable member of the human race, direct, fallible and uncommonly wise. And I think Harvey Weinig has exhibited substantial wisdom in many ways, in the way he has raised his sons, in the way he has looked after his mother and his sister, in the way he has counseled countless friends in difficult situations and taken in young people and tried to help them get through that hard part of life, and in the way he has, as Paul Chernis described it, exhibited a willingness to put his principal assets on the line for a friend, something which few people would do.

But we are here because, however decent and honorable and good a man and good a life he has led, Harvey was not uncommonly wise but uncommonly stupid and uncommonly wrong to become involved in the conduct to which he has pled guilty.

He has acknowledged his wrongdoing, his avarice, his greed, his stupidity by entering pleas and by trying to make amends to the extent that he could in terms of offering help to the government.

I don't believe he shirks his responsibility for his wrongdoing. I explained the context of how he came to be involved in this money laundering activity. He was not Peter Thomes, the German client of Hirsch's, who really was

running this business. He did not sit down and make a conscious, knowing decision to initiate and enter into a business of laundering drug proceeds. Instead, what happened was, he was given a story by his law partner, a man he liked, respected, trusted, someone he thought was smart, and he was told that Robert Hirsch had a client, a long-time client, for whom he had done previous work, who was in the gray market or parallel market business in a big way. He was told that this business generated a lot of cash, and he was told that Hirsch had actually handled the prior forfeiture problem for the client before he had become Harvey's partner, and that, in that proceeding, Hirsch had been successful and the government had not established that the money was drug money and Hirsch got the money back, at least that's what he said.

So Mr. Weinig and Mr. Spence, Mr. Richard Spence, became involved in what I will call the money movement or money laundering business. And, not that Harvey isn't a smart person, a sophisticated person, or for that matter Spence wasn't either, but he was told, and he accepted at least for a while the notion that this was a gray market, parallel market business. This was not a drug business. And I think it is significant that Spence himself, testifying as a government witness after months of working with the government prosecutors and agents said that he too,

at least up until the summer of '94, thought that this was gray market and not drug money.

Hirsch actually can be heard on a tape on September 20 at 6 p.m. talking to Mr. Thomes himself, complaining about the fact that he had been misled by Thomes, that he has these Colombians after him. And Thomes, at that stage of the game, was telling Hirsch, at least as it appears on the government tape the government gave us, don't be ridiculous. This isn't drug money.

So all of the very many facts and details and circumstances of this case, it would take, as the government probably knows better than I do, that context, I think, is fair, Judge, and I think that's what happened. He never came upon and I don't think Harvey can pinpoint it with any precision, that he did figure out that it wasn't what he was being told.

Spence got a little hint, because Spence had a friend who was a cop who was helping, who tipped him off to the facts that the feds were investigating him for money laundering. But as in other instances, this is not something that Spence shared with Harvey Weinig. So he didn't have the benefit of that information. But sometime probably in the summer, he figured it out. And then in September, when Hirsch went to work for the government and started wearing a wire, Hirsch told him and Hirsch told him

all about Colombians and death threats, how they wanted to be able to pay back the Colombians for money that had previously been wrongfully withheld.

Harvey stayed in. Harvey made money. He liked having the money. He liked having the security. That was wrong. And he has told you it's wrong. And he doesn't back away from that, your Honor.

The other case, although not nearly as complicated, is also somewhat bizarre. Spence, who Harvey had served as a lawyer on other occasions, commercial matters, Spence had for once actually been duped himself, cheated himself, and some fellow named Clooney, in effect, stole $237,000 from him by fraud, and Spence wanted to get it back, and pursued getting it back in various ways. One of the ways was that he went to Harvey -- I think on one of the tapes he is saying he went to Harvey because Harvey didn't charge him. But he went to Harvey and he asked whether he could do something legally, and Harvey considered and discussed the possibility of a civil lawsuit. Harvey communicated with the lawyer for Clooney about the money and why wasn't it held in escrow, and they even talked about the possibility of referring the matter to a local prosecutor, I think in Suffolk County.

But nothing happened quickly, and, while Harvey was away for a few days in London, Spence talks to Salerno

about initiating this kidnapping of Clooney or to force the guy who basically had been diddling and telling him one story after another, your classic conman, not really coming up with the goods. And Spence goes in and talks about kidnapping the fellow. That is on Friday the 11th. On Saturday the 12th, they do it. They hold him for a couple of days. And Harvey was apparently told about this Tuesday the 15th, because he reports it to Hirsch in a taped conversation. And he says that Spence has told him that he has had somebody go seize this guy.

According to Harvey, at least according to the transcript of the tape as we understand it, something that he is told happened that day, and the next morning, Spence calls Weinig, at a point earlier in the morning, this is the 16th, to report that he's worried because Salerno may have been arrested and he may have been arrested in connection with the kidnapping of Clooney. And as Weinig then reports to Hirsch in another taped conversation, he describes it, I think, as "it's falling apart."

Spence apparently, at least at that time, doesn't know where Clooney is. Apparently Clooney has been released in some way. But at some point later that day, Weinig is told that Clooney and his girlfriend will be coming in to sign papers turning over a security interest in certain property to Spence, pursuant, as I understand it, to an

arrangement that Clooney promised to do more than a week earlier but hadn't gotten around to doing. And Mr. Weinig basically let it happen. He didn't stop it. He didn't sit down with Clooney and say, "Are we doing this voluntarily? Are you under any kind of coercion or threat or anything?" He let it happen, knowing what he knew, which wasn't everything, Judge. It wasn't everything. He didn't know details. He could tell that Clooney obviously hadn't been hurt, and Clooney was really operating on his own, in an office in midtown Manhattan on his own. But when he knew that something had probably encouraged or persuaded Mr. Clooney to do this, he let it happen.

That was wrong. That can't be taken back. And he has really, for his conduct in these two events, already, before he does a day in jail, paid a remarkable price. He has lost his livelihood, his right to be a lawyer, and I think that means more to some people than to others. To Harvey Weinig it probably means more than it means to most of us.

And other than this conduct, I think Harvey Weinig probably honored the profession more than most of us. Speaking for myself, I have to say he certainly did more as a lawyer for people on a pro bono basis than I ever did or thought of doing. And he did it continually, throughout twenty years of practice, not in a big time way, not getting

the rewards of legal aid dealers or anything like that, but helping the gas station attendant, or the housekeeper, or the brother-in-law of his friend gratis, helping people, actually counseling people, in a wonderfully wise way in many situations as to how to do the right thing, even if it isn't necessarily exercising the fullest extent of somebody's legal rights.

It went on through his practice. The man who came in from Harvey's prior firm, Berger, Steingutt, having had his former firm break up and having just lost his major client and being in desperate straits, and Harvey kind of befriended him and looked out for him and took care of him. The general counsel of Philip Morris, who was suddenly, without warning, dumped from his job because of political mechanizations within that company and having practiced for 20 years in New York, no one else helps him, Harvey Weinig gives him a place to sit, gets his secretary to help him out, get his practice going.

I think he has been an uncommon lawyer and an uncommon human being, and he is probably proudest of the way in which he has been a father. He has certainly devoted an incredible amount of time and effort to helping his sons grow, to giving them lessons about how to live life. He certainly had never anticipated giving them the lesson that he has had to give them in the last year and a half, that

their own father could go so far astray in doing wrong. But he has in many respects been a phenomenal father, and, again, just speaking personally, it makes me regret that I did not live a life the way he lived it. I spent much too much time in practicing law, working my cases.

Probably the hardest thing of all for Harvey as a person, at least as I have come to know him, is that he has had to hand this to his family, at this stage in his life and their lives. And that has produced really inconsolable anxiety and anguish and there's nothing he can do.

All I can ask, Judge, is that, in imposing sentence, you extend as much mercy and leniency as you think is appropriate to someone who has engaged in this conduct, taking into account the big picture, the way in which he has lived his life.

Thank you.

THE COURT: Mr. Weinig, do you have anything to say?

THE WITNESS: Yes, your Honor. Your Honor, today marks yet another milestone in the nightmare from which I am unable to awake. It is indeed the darkest day of my life. I stand before this Court, humiliated, shamed, mortified.

Since I was aware that words might not come easily today, I asked that the Court accept the letter that I sent you this week --

THE COURT: I read it.

THE WITNESS: -- in an attempt to understand my conduct. I apologize to this Court, to the Bar that has given me succor for so many years, to my relatives and friends, both those who stayed for the pain and those who could not. I ask their forgiveness. Foremost, your Honor, I apologize to Alice, my wife, who has learned the meaning of the words "for better or worse." I apologize to my children, who every day must deal with the fact that their father, a man they love, is a felon, a law breaker, a criminal. I ask their forgiveness as well.

It is my desperate hope that I will have the time and ability to try and make it right for them, to try and ease the burden that I have been forced -- that I have forced upon them, which they will carry every day of their lives.

I want the record to state that there is blame in this matter, your Honor. And that blame rests squarely with me. I will carry that blame with me until the day that I die.

THE COURT: You know, you talk about a nightmare. Nightmares come from the unconscious, the subconscious. What you are facing is something that you were conscious or you got yourself into. Your lawyer tells me that, in 30 years, he hasn't faced a situation like this. But he has

only faced it from two aspects; number one, as a prosecutor; aspect number two, as a defense counsel. There is a third one. The third one is as a representative of society. When you look on a person to be sentenced, not only as a human being, but as to what he has done to society. The suggestion has been made that you are a very altruistic person, that you are a great guy and maybe you are two people. I don't know.

Let's start with looking from society's viewpoint at the kidnapping. What would you have done, Mr. Weinig, if your son Jacob had been kidnapped and some lawyer knew about it, and knew he could get him out of there, and didn't do anything? You didn't think about that, did you?

I insisted on getting the tape and listening to your conversation with Hirsch when you talk about it, very flip, matter of fact. You couldn't care less, but if it had been your son, you would have cared more.

The suggestion is made to compare you to Harry Truman. Truman certainly wouldn't have done that. As a member of the human race, he had dealings with other people too.

You apparently were able to divide yourself in two, outside the office and inside. Even when Clooney came in, your attorney says you let it happen. Sure you let it happen, because you went, and you stuck two young associates

with the job of cleaning it up.

This is a very human thing. I don't know. The suggestion is made that you are not smart or sophisticated. I can't believe that. You thought that the money laundering was coming in gray market goods. But even you admit that you knew where it was coming from, at least at the end.

What are we talking about? Well, the figures vary, from 72 million dollars, that the Swiss bankers claimed to have laundered, to nineteen, which I understand you are accused of. Nineteen million dollars in drugs is a lot of money. That much drugs is a lot of pain. If Samuel or Jacob were the ones who were using the drugs, you would be singing a different story, an entirely different song.

Now, you ask, Mr. Weinig, for as much mercy as I can give. You and your client should feel glad that this is a guidelines case and not something more. Not in the old days. Because if it had been in the old days, I would have given him the statutory maximum.

It is the judgment of the Court in Harvey Weinig that he be remanded to the custody of the Attorney General for a period of 135 months; thereafter, to serve three years supervised release, $100 special assessment.

You have a right to appeal, Mr. Weinig. I don't know of any grounds for any such appeal. But if you want to, you can. If Mr. Weinig does not file those appeals, you

can, or you can ask the clerk to do it.

Are there outstanding counts left?

MR. GOODMAN: Yes, your Honor. At this point, the government would move to have those counts dismissed.

THE COURT: Are there any underlying indictments or things like that?

MR. GOODMAN: Yes, your Honor. There are two underlying indictments, your Honor.

THE COURT: At this point, the government is going to orally nolle those?

MR. GOODMAN: Yes, your Honor.

THE COURT: Mr. Weinig?

MR. WING: Your Honor, may the defendant be permitted to surrender directly to the institution?

THE COURT: Yes. Two weeks.

MR. WING: Could your Honor recommend to the Department of Prisons that he be permitted to go to Allen camp?

THE COURT: I will not. It is up to the Department of Prisons. I find that any recommendations I make are not paid any attention to anyway. So they do what they want.

MR. WING: Could your Honor --

THE COURT: Whether I recommend it or not doesn't mean a damn thing.

MR. WING: Given the length of the sentence, your Honor, it may make some difference if your Honor at least indicates on the record that you would have no objection to his serving in a minimum security camp.

THE COURT: I have no objection to his serving in anyplace. It is up to them, not me. I have enough work to do without picking out prisons for people. Besides that, as I said, they don't pay any attention when I do.

All right. Two weeks from today, Mr. Weinig, if you are not designated, you are to surrender to the marshal in this district.

Do you understand?

THE WITNESS: Yes, your Honor.

THE COURT: Does the government have any objection to the form of the sentence? If so, say so now?

MR. GOODMAN: No, your Honor, we do not.

THE COURT: Does the defense have any objection to the form of the sentence?

MR. WING: No, your Honor.

(Proceeding concluded.)

U.S. DISTRICT COURT FILED MAR 25 1996 S.D. OF N.Y.

AO 245 S (Rev. 4/90) Sheet 1 - Judgment in a Criminal Case

United States District Court

SOUTHERN District of NEW YORK

UNITED STATES OF AMERICA
V.
HARVEY WEINIS
(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: S4 94cr00981-01(KID)
S2 95cr00167-03(KTD)

JOHN WING
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 38
☐ was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
T. 18, USC, section 1956(h)	Conspiracy to commit Money Laundering	11/30/94	1
T. 18, USC, sections 982(a)(1) and 982(b)(1)(A)	Criminal forfeiture	11/30/94	38

The defendant is sentenced as provided in pages 2 through .. ____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

☒ Count(s) All outstanding counts (is)(are) dismissed on the motion of the United States.

☒ It is ordered that the defendant shall pay a special assessment of $ 100.00, for count(s) 1, 38, which shall be due ☐ immediately ☐ as follows:

All underlying Indictments Nolled on oral motion of the govt.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 065-38-3733

Defendant's Date of Birth: 3/26/48

Defendant's Mailing Address:
110 Riverside Dr.
Apt. 5F
New York, NY 10024

Defendant's Residence Address:
same

MARCH 22, 1996
Date of Imposition of Sentence

Signature of Judicial Officer

KEVIN THOMAS DUFFY-USDJ
Name & Title of Judicial Officer

MARCH 22, 1996
Date

EXHIBIT 12

MICROFILM MAR 25 1996

Judgment—Page 2 of 3

ndant: HARVEY WEINIG
se Number: S4 94cr00981-01(KTD)
S2 95cr00167-03(KTD)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of

ONE HUNDRED AND THIRTY-FIVE(135) MONTHS.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States marshal.
☐ The defendant shall surrender to the United States marshal for this district.
☐ at _____ a.m. p.m. on _____.
☐ as notified by the United States marshal.
☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
☒ before 2 p.m. on 4/5/96.
☒ as notified by the United States marshal.
☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal

03/29/01 THU 16:19 FAX U S DISTRICT COURT

Rev. 4/90) Sheet 3 - Supervised Release

Judgment—Page 3 of 3

Defendant: HARVEY WEINIG
Case Number: S4 94cr00981-01(KTD)
S2 95cr00167-03(KTD)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

THREE(3) YEARS.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☐ The defendant shall not possess a firearm or destructive device.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

PETITION FOR COMMUTATION OF SENTENCE

Print or type legibly

Relief sought: *(check one)*

☒ Reduction of Prison Sentence Only ☐ Reduction of Prison Sentence and Remission of Fine
☐ Remission of Fine Only ☐ Other_____

TO THE PRESIDENT OF THE UNITED STATES:

PETITIONER, Harvey Weinig (First Name, Middle, Last), a Federal prisoner, Reg. No. [redacted], confined in the Federal Institution at Fort Dix, New Jersey, in seeking a commutation of sentence, states that he was born on [redacted] and has Social Security No. [redacted]. (If not a United States citizen, indicate country of citizenship: N/A.)

PETITIONER was convicted on a plea of guilty (guilty, not guilty, nolo contendere) in the United States District Court for the Southern District of New York of the crime of: Conspiracy to launder money (18 U.S.C. Section 1956(h)); misprision of felony (18 U.S.C. Sections 2 and 4); and forfeiture of assets used in furtherance of a conspiracy (18 U.S.C. Section 982).

involving the following circumstances: As to the first count, I assisted various individuals in laundering money, after realizing that the funds were proceeds of illegal drug sales.

As to the second count, I became aware, after the fact, that a client of mine had detained an individual who had defrauded my client and owed my client money. I subsequently instructed associates in my law firm to prepare documentation that gave my client a security interest in some of the individual's assets. I did not report to the authorities that my client had previously detained the individual.

and was sentenced on March 22, 1996, to imprisonment for 135 months (length of sentence) and/or to pay a (☒ fine ☐ restitution) of $ 100.00 (check one - do not include special assessment) and/or to supervised release or special parole for 3 years (length of sentence) and/or to probation for _____ (length of sentence).

My (☒ fine ☐ restitution) (☒ has ☐ has not) been paid; the balance owed is $ 0.

PETITIONER began the service of his sentence on April 19, 1996. He will be released from confinement on July 18, 2007. If eligible for parole, he (☐ was ☐ will be) eligible on N/A, _____, and his application for parole was (☐ granted ☐ denied).

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PHOTOCOPY

April 1994

PENGAD-Bayonne, N. J.
EXHIBIT
13

If your conviction or sentence was appealed or otherwise challenged, complete the following paragraph:

PETITIONER appealed to the United States Court of Appeals, where the judgment was affirmed on _____, 19___. A petition for a writ of certiorari (☐ was ☐ was not) sought from the Supreme Court, and (☐ granted ☐ denied) on _____, 19___. Petitioner (☐ did ☐ did not) challenge his conviction or sentence under 28 U.S.C. §2255 (habeas corpus). (Provide citations to court opinions, if known: _____.)

In this paragraph, list every arrest, either as a juvenile or an adult, whether or not resulting in a conviction. For each incident list date, nature of offense charged, law enforcement authority involved, location, and disposition, if known.

PETITIONER'S criminal record, other than the instant offense, is as follows:

No previous offenses

PETITIONER respectfully prays that he be granted clemency for the following reasons:

See attached

The statements contained herein are true to the best of my knowledge and belief, and I understand that any misstatements of material fact contained herein may subject me to criminal prosecution and/or cause adverse action on my petition for executive clemency.

4/6/2000
Date

Harvey Weiss
Signature of Petitioner

If space is insufficient, additional pages may be added. Letters and/or other supporting material may be submitted with petition.

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It is difficult to express how deeply I regret my criminal conduct. I am ashamed to have abandoned my lifelong principle of integrity. I am ashamed to have forsaken my ethical obligations as an attorney and know that I will never be able to practice law again. I am ashamed of the devastation that my criminal conduct has visited on my innocent family – on my wife Alice, who now has a felon for a husband, and on my teenage sons Jake and Sam – whose father is a criminal. I am ashamed that the labels "felon," "money launderer" and "convict" now follow me wherever I go.

Though I did not know at first that I was helping a client of my law partner launder the proceeds of drug sales, I ultimately came to realize that this was the case. As soon as I made that realization, I should have taken action, but I did not.

As to my client's abduction of an individual, I did not learn of the kidnapping until after the individual had been released. However, once I learned that the detention had occurred, I should not have allowed the client to use my offices and associates to assist him in collecting the debt he was owed by the kidnap victim.

As I told the Judge who sentenced me, the blame for all my criminal acts rests squarely with me, and I will shoulder that blame until the day I die. Please permit me to rejoin my family and society, after five long years of incarceration, so that I can begin to repair the damage I have caused my family and seek to contribute positively to my community.

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HARVEY WEINIG'S MEMORANDUM IN SUPPORT OF
HIS PETITION FOR COMMUTATION OF SENTENCE

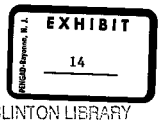
I. INTRODUCTION

Harvey Weinig – a father of two boys, a lawyer with a history of public service, a man with no prior criminal record – naively permitted himself to become involved in legal work in furtherance of a money laundering conspiracy. He pleaded guilty in 1995 and cooperated with the government.

Eleven of Mr. Weinig's co-defendants, including the leaders of the conspiracy, pleaded guilty and were sentenced to prison terms of three years or less. Mr. Weinig – in spite of the absence of any prior criminal record, his minor role in the operation, and his cooperation – pleaded guilty and received a sentence of 11 years and three months. This gross disparity in sentencing shocks the conscience and violates fundamental principles of fairness and equal treatment under the law. While the leaders of the conspiracy are free, Mr. Weinig, who has already been incarcerated for almost four years, faces an additional seven years in prison.

Mr. Weinig is a good man who made a horrible, life-changing mistake. He forthrightly admitted his wrongdoing, is deeply ashamed of his actions, and has suffered the severe punishment of almost four years in prison.[1] His children – one of whom has been institutionalized for severe depression – desperately need him. This petition is his only hope for

[1] Mr. Weinig has been confined in Federal Correctional Institution ("F.C.I.") Fort Dix, New Jersey since April 19, 1996.



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equal justice.[2] Mr. Weinig respectfully requests that the President commute his sentence to five years, so that he may rejoin his family and contribute positively to his community after one more year of incarceration.

II. BACKGROUND

A. Personal Background

Harvey Weinig was born in Brooklyn, grew up in Queens and attended Hobart College on a Regent's Scholarship. Mr. Weinig's father died while Mr. Weinig was in college, leaving Mr. Weinig to take care of his mother and mentally disturbed younger sister. After graduating from Hofstra University School of Law, Mr. Weinig worked as a clinical professor in Hofstra's poverty law clinic. He married Alice Morey in 1980, and they had two sons -- Jake, now 17, and Sam, now 14.

B. Events Leading to Plea

In May 1993, following the dissolution of the law firm where he had been a partner for a number of years, Mr. Weinig formed a small law firm in New York City with a newly-arrived partner from his old firm named Robert Hirsch. At that time, Mr. Weinig had

[2] No other forms of relief are available to Mr. Weinig. See 28 C.F.R. §1.3 (1997) (setting forth the requirement of the absence of other forms of relief). Although Mr. Weinig's trial attorney moved pursuant to Rule 35(c) for correction of sentence on grounds of clear error, the District Court did not rule on the motion in a timely fashion. The District Court has no power to correct or reduce the sentence under Rule 35(a) because the sentence has not been overturned on appeal and remanded to the district court. Eligibility for reduction of sentence on motion by the government under Rule 35(b) expired March 22, 1997, one year after sentencing. Mr. Weinig's right to appeal the sentence directly expired on April 1, 1996. Fed. R. App. P. 4(b). Finally, his right to attack the sentence collaterally has expired. See 28 U.S.C. § 2255(1) (1998) (one-year limitations period for collateral attack on federal conviction).

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known Mr. Hirsch for less than a year and was unaware of the fact that Mr. Hirsch and one of Mr. Hirsch's clients, Peter Tohmes, had been involved for years in a conspiracy to launder the proceeds of United States drug sales in Europe and South America.

Soon thereafter, Mr. Hirsch asked Mr. Weinig for assistance in instituting legal actions to recover certain funds that the DEA had seized from Mr. Tohmes, and in processing certain wire transfers of funds for Mr. Tohmes. Mr. Hirsch advised Mr. Weinig that Mr. Tohmes was a legitimate businessman involved in the buying and selling of "gray market goods," and produced documents and business records to corroborate his client's legitimacy. Mr. Weinig naively accepted Mr. Hirsch's representations as to the propriety of the transactions. Over time, Mr. Weinig came to realize that Mr. Tohmes' business was highly irregular and did not seem to be conducted as Mr. Hirsch had represented. Nonetheless, Mr. Weinig felt trapped in the situation, and exercising what he later acknowledged to be bad judgment, continued to assist in processing wire transfers on behalf of Mr. Tohmes pursuant to Mr. Hirsch's instructions.

It was not until September 1994, when Mr. Hirsch advised Mr. Weinig that Colombian drug dealers had threatened to kill Mr. Hirsch and his family, that Mr. Weinig came to realize that Mr. Tohmes' funds were most likely the proceeds of illicit drug transactions. As it turned out, Mr. Hirsch was told of these Colombian death threats by federal agents who had arrested Mr. Hirsch and confronted him with the choice of spending his life in jail for money laundering or earning a 5K1.1 letter by working as a secret government informant. Mr. Hirsch agreed to serve as an informant and spent the next two months secretly taping conversations with Mr. Weinig and others.

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In November 1994, Richard Spence, a retired fireman whom Messrs. Hirsch and Weinig had hired to assist in the transportation of money on behalf of Mr. Tohmes, sought Mr. Weinig's legal assistance in recovering approximately $237,000 that Mr. Spence had been fraudulently induced to invest in an insolvent mortgage company by an individual named James Clooney.[3] At the same time, but without Mr. Weinig's knowledge, Mr. Spence had Mr. Clooney detained against his will to convince him to repay the $237,000.[4] Mr. Weinig learned of Mr. Clooney's detention only after Mr. Clooney had been released.[5] Despite learning that the abduction had occurred, Mr. Weinig instructed his associates to prepare the necessary documentation that would transfer certain assets of Mr. Clooney to Mr. Spence in repayment of Mr. Clooney's legitimate debt to Mr. Spence. Mr. Weinig did not report Mr. Spence's activities to the authorities.[6]

[3] For a more detailed description of how Mr. Weinig became involved with Messrs. Tohmes and Spence, see Letter to Mary Jo White, February 28, 1997 (Ex. I).

[4] It was later learned that Mr. Clooney was provided with steaks and prostitutes during his "detention." Also, the law enforcement agents, who had learned of the kidnapping from Mr. Hirsch, took no action and did not arrest Mr. Spence or any of the other participants.

[5] In fact, Mr. Weinig and his wife were out of the country on vacation when Mr. Clooney's detention took place.

[6] It is uncontested that Mr. Weinig did not actually participate in the "kidnapping" scheme and did not know about the detention until after Mr. Clooney was already released. As Mr. Spence's attorney, Mr. Weinig had an ethical obligation not to disclose confidential knowledge of his client's prior criminal acts. See, e.g., People v. Belge, 83 Misc.2d 186, 190, 372 N.Y.S.2d 798, 803 (N.Y. Crim. Ct. 1975) (dismissing indictment against attorney who maintained client's confidence by failing to reveal location of murder victim's body on grounds of privilege), aff'd 376 N.Y.S. 2d 771 (N.Y. App. Div.), aff'd 41 N.Y.2d 60 (N.Y. 1976).

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C. Guilty Plea and Cooperation with the Government

In 1995, Mr. Weinig pleaded guilty to two felonies, agreed to forfeit a house and other assets to the government, and cooperated with the government's continuing investigation and prosecutions.[7] Mr. Weinig willingly submitted to extensive questioning from the U.S. Attorney's Office and the FBI regarding the activities referenced in the indictment, and disclosed to the government that Mr. Hirsch had lied in the course of his cooperation and was preparing to flee the country. Mr. Weinig even offered to wear a wire to assist the government in gathering evidence against Mr. Hirsch.

In November 1995, in the midst of Mr. Weinig's cooperation, the U.S. Attorney's Office transferred responsibility for the case from AUSA Mark Goodman to AUSA Lev Dassin. Mr. Weinig, eager to continue his cooperation, promptly sent Mr. Dassin a letter attaching transcripts and memoranda of numerous conversations with Mr. Hirsch. (Ex. D). For no apparent reason, Mr. Dassin declined to follow up on Mr. Weinig's fact memoranda and offers to appear for further debriefings. The government subsequently denied Mr. Weinig a 5K1.1 letter which would acknowledge his cooperation, even as Messrs. Hirsch (who had lied to the government and sought to flee) and Spence received 5K1.1 letters and escaped more serious punishment.

In Mr. Weinig's case, the Federal Sentencing Guidelines called for a custodial term ranging between 108 and 135 months. See Pre-Sentence Investigation Report at 16 (Ex. B).

[7] Mr. Weinig pleaded guilty to conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) and misprision of a felony in violation of 18 U.S.C. § 4. In addition, Mr. Weinig agreed to criminal forfeiture of a home in Amagansett, New York, and his interest in the assets of the Hirsch Weinig law firm, pursuant to 18 U.S.C. §§ 982(a)(1) and (b)(2), and 21 U.S.C. § 853(p). See Plea Agreement, Sept. 20, 1995, at 5-6 (Ex. B).

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The sentencing judge, without justification – and apparently ignoring Mr. Weinig's ethical obligations to preserve client confidences relating to the prior kidnapping – imposed the maximum sentence permitted by the guidelines.[8]

III. BASES FOR COMMUTATION

The President should commute Mr. Weinig's sentence for several reasons: (1) Mr. Weinig's sentence was unconscionably disproportionate to the sentences given to his more culpable co-defendants, as well as the sentences generally given to money launderers; (2) Mr. Weinig has made and will make a positive contribution to society; (3) Mr. Weinig's family needs him; and (4) Mr. Weinig deeply regrets his actions and does not require further punishment or rehabilitation.

A. Gross Disparity of Sentence

1. Gross Sentencing Disparity is an Appropriate Basis for Granting Commutation

Our system of justice is based on the principle of equal sanctions for equally culpable conduct. See United States v. Perez, 767 F.2d 1 (1st Cir. 1995) (Aldrich, J., concurring). As the court declared in granting a defendant a downward departure under the sentencing guidelines in United States v. Hart, 876 F.Supp. 4, 6 (D.D.C. 1995), "a grave injustice would be committed if no consideration was given to unwarranted disparities in sentences

[8] At the sentencing hearing, Judge Duffy specifically referred to Mr. Weinig's knowledge of and failure to report Mr. Clooney's detention. See Transcript of Sentencing Hearing, March 22, 1992, at 13 (Ex. E). To the extent that Judge Duffy based the sentence in part on Mr. Weinig's failure to report the detention after he learned of it, this consideration was improper in light of Mr. Weinig's ethical obligation not to disclose client confidences. See note 6 supra.

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between co-defendants." Accordingly, "it is appropriate for a president to grant a pardon to prevent or mitigate the comparative injustice that occurs when one person's punishment is disproportionate to that given to (1) other participants in the same crime, and/or (2) those convicted of similar crimes within the jurisdiction." Kathleen Dean Moore, Pardon for Good and Sufficient Reasons, 27 U. Rich. L. Rev. 281, 287 (1993); see also Daniel T. Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power From the King, 69 Tex. L. Rev. 569, 627 (1991). The U.S. Attorney's Manual explicitly lists "disparity or undue severity of sentence" as an appropriate basis for granting commutation. See U.S. Attorney's Manual § 1-2.113 ("Standards for Considering Commutation Petitions"), September 1997.

In furtherance of this principle of equal justice, presidents have exercised the pardon power to commute the sentences of defendants who have been inexplicably treated more harshly than similarly situated co-defendants. For example, President Carter commuted the 20-year sentence of Watergate conspirator G. Gordon Liddy after four years and three months because none of his co-defendants in the Watergate break-in and cover-up had been sentenced to more than a year and a half in prison.[9] Similarly, when the Parole Commission granted parole to former Maryland governor Marvin Mandel's codefendants but denied parole to Mr. Mandel, President Reagan commuted Mr. Mandel's sentence.[10] As discussed below, Mr. Weinig's

[9] Daniel T. Kobil, The Quality of Mercy Strained: Wresting the Pardoning Power From the King, 69 Tex. L. Rev. 569, 627 & n.346 (1991); see also Krajick, The Quality of Mercy, 5 Corrections Magazine, June 1979, at 53 (citing unfair disparity as the basis of the Liddy commutation).

[10] Department of Justice Press Release, Dec. 3, 1981 (Ex. G). See also Charles S. Clark, Reagan Parsimonious in Use of Pardon Power, Congressional Quarterly, Nov. 3, 1984, at 2878-79. Although the disparity in Mandel's case involved the inconsistent actions of the Parole Commission rather than sentencing judges, the justification for the commutation was the same as here: similarly culpable participants in the same crime should be similarly punished.

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sentence violates the same fundamental principles of fairness and justifies the extraordinary remedy of executive clemency.

2. Mr. Weinig's Sentence Was Grossly Disproportionate to the Sentences Given to More Culpable Co-Defendants

Messrs. Hirsch and Tohmes carried on their money laundering conspiracy for some time before Mr. Weinig became an (initially unwitting) participant. Even after Mr. Weinig became knowingly involved in illegal activities, he simply implemented Mr. Hirsch's instructions to file legal actions, document transactions or wire funds, and did not play a proactive or leadership role in the conspiracy. Nonetheless, as set forth below, Mr. Weinig received a sentence far more harsh than the sentences given to the acknowledged "ringleaders" of the money laundering and kidnapping schemes:

- Robert Hirsch, the lawyer who led Mr. Weinig into the scheme, who continued to engage in money laundering while acting as a government informant, who was re-arrested by the government for these continued criminal activities and for lying to the U.S. Attorney's Office and FBI, and who pleaded guilty to numerous money laundering, bank fraud and false statements counts, was sentenced to a prison term of three years.

- Richard Spence, who became a principal participant in the conspiracy, who had an extensive prior criminal record, and who pleaded guilty to money laundering, wire fraud, false statements, extortion by kidnapping and mail fraud counts, was sentenced to a prison term of three years.

- Peter Tohmes, the principal in the drug money laundering scheme, who pleaded guilty to a money laundering conspiracy charge, was sentenced to a prison term of eight years and one month, but has spent only a short amount of time in jail, pending a treaty transfer to Israel.

- Gary Salerno, a courier in the money laundering scheme who also carried out Mr. Spence's kidnapping and who had just been sentenced in the Eastern District of New York to a prison term of 25 years on unrelated racketeering, extortion and conspiracy counts,[11] pleaded guilty to a money

[11] See United States v. Salerno, Case No. 95-CR-00437 (Docket No. 160).

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laundering conspiracy charge, and was sentenced to a prison term of nine years, to run concurrent with his 25-year sentence.

- Leon and Rachel Weinmann, who were Peter Tohmes' bankers in Switzerland and who "acknowledged having moved between $70 million and $100 million with Peter [Tohmes] during [1993]"[12] were sentenced to one year unsupervised probation on the condition that they return to Switzerland to respond to money laundering charges there. The Weinmanns returned to Switzerland, where they have never been tried or convicted on any charges.

- Nine other defendants who served as couriers or otherwise assisted in collecting, holding and/or transferring illegal funds, including a New York City police officer and a registered broker, pleaded guilty to money laundering and/or other felonies and were sentenced to terms ranging from probation to a prison term of two years and three months.

- Several other participants charged in the indictment had the charges against them dismissed.

It is unconscionable that Mr. Weinig, a belated and minor participant in the conspiracy, should serve a term of more than 11 years, while Mr. Hirsch, the leader of the money laundering scheme, and Mr. Spence – a major participant in the scheme who had a prior criminal record and who directed the related kidnapping – both received a sentence of only three years. It is unconscionable that Mr. Weinig, who pleaded guilty to failing to report a kidnapping that he learned of after the release of the victim, should receive a sentence longer than that of Mr. Salerno, the individual who actually conducted the kidnapping and who had only months earlier been sentenced to a term of 25 years on assorted racketeering, extortion and conspiracy charges. While the conspiracy's leaders are already free, Mr. Weinig faces more than seven additional years in prison.

[12] See Criminal Complaint, ¶ 190 (Ex. A).

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3. Mr. Weinig's Sentence Is Grossly Disproportionate to Money Laundering Sentences Nationwide

Mr. Weinig's sentence is also grossly unfair because he has been punished far more severely than convicted money launderers in other cases, contrary to the principles of "equality and proportionality" underlying the sentencing guidelines. See U.S. v. Sardin, 921 F.2d 1064, 1067 (10th Cir. 1990). The median sentence for money laundering convictions is 24 months, according to recent U.S. Sentencing Commission statistics.[13] Yet Mr. Weinig's sentence was 135 months – more than five times as long as the median sentence for his crime.[14] The U.S. Sentencing Commission itself has recognized the inequities that have arisen in sentencing in the money laundering context, observing that "the broad and inconsistent use of money laundering charges, coupled with an inflexible, arbitrarily determined guideline structure, is resulting in substantial unwarranted disparity and disproportionality in the sentencing of money laundering conduct." United States Sentencing Commission, Sentencing Policy for Money Laundering Offenses, including Comments on Department of Justice Report, Sept. 18, 1997, at 9. In this case, the gross disparity between Mr. Weinig's 135-month sentence and the 24-month median sentence for money launderers further demonstrates the unconscionability of Mr. Weinig's sentence and warrants commutation.

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[13] United States Sentencing Commission, 1998 Sourcebook of Federal Sentencing Statistics at 111 (Table: "Average Length of Imprisonment for Appeals Defendants [sic] in Each Primary Offense Category, Fiscal Year 1998").

[14] As noted above, Mr. Weinig also pleaded guilty to misprision of felony. However, the underlying offense for that count implicated a sentencing guideline (§2B3.2) that resulted in a far lower offense level than the guideline for money laundering (§2S1.1). Also, the conduct underlying the misprision plea did not constitute "relevant conduct" to the money laundering guideline that would increase Mr. Weinig's "total offense level" for sentencing purposes. See Pre-Sentence Investigation Report at 31-32 (Ex. B). Therefore, it is appropriate to compare Mr. Weinig's sentence with those imposed on other individuals convicted of money laundering.

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B. Mr. Weinig Has Made and Will Make a Positive Contribution to Society

Mr. Weinig's extraordinary history of assisting other people in need also supports commutation of his sentence. Dozens of people, from all walks of life, submitted letters on Mr. Weinig's behalf in connection with his sentencing, describing the extraordinary positive influence that Mr. Weinig had on their lives and in his community.[15] Moreover, despite Mr. Weinig's lengthy incarceration – which often causes many "friends" and supporters to disappear – numerous individuals have submitted letters in support of Mr. Weinig in connection with this petition.[16] All these letters – whether written before or after his incarceration – speak far more eloquently of Mr. Weinig's character than anything a lawyer could say.

In her 1995 letter to the sentencing judge, Associate Dean of CUNY School of Law Susan Bryant, who has known Mr. Weinig for more than 21 years, stated that his life has been "spent caring about people and doing the little acts that each of us can do, but often do not, to make our friends' lives a little better. Harvey will willingly help people who ask for it; perhaps, more remarkably, he often senses that somebody needs help and offers it without anybody asking." See Letter of Susan Bryant at 5 (Ex. J.5). In her more recent letter submitted in support of this petition, Professor Bryant describes the positive influence Mr. Weinig had on his community:

> Before his incarceration, Harvey lived a life of good deeds for all around him. He befriended several teenagers whose own fathers had abandoned them; he put two children other than his own through school; he borrowed money so that a friend could start a business; and he provided free legal services to those who needed

[15] These letters, which are attached as Exhibits J.1 through J.52 in alphabetical order, are from a diverse group of friends, neighbors, relatives, professional colleagues, clients and employees.

[16] These letters are attached as Exhibits K.1 through K.13 in alphabetical order.

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> them and he was well liked by everyone he met from the doorman to the presidents of companies.

See Letter of Susan Bryant at 3 (Ex. K.2).

Brooklyn Law School Professor Aaron Twerski, who has known Mr. Weinig since Mr. Weinig was in law school, explained:

> He has a sense of caring and sensitivity and a capacity to love that is awesome. All of us who have been touched by him know this in an unmistakable way . . . . For me and for many others, Harvey was our Rabbi . . . . Over the years Harvey reached out to help countless troubled teenagers through difficult periods of their lives. He paid tuition for them at private schools when they had special needs that could not otherwise be met. On several occasions he took out loans to do so.

See Letter of Aaron D. Twerski at 2 (Ex. J.47).

Mr. Weinig was continuously extending himself far beyond the ordinary bounds of human decency and friendship. Laura Blankfein, who has known Harvey for more than 15 years, described him as "one of those people . . . that friends and extended family always knew they could turn to for help." See Letter of Laura J. Blankfein at 2 (Ex. J.2). Her husband added:

> [Harvey] gave money or legal services to babysitters, garage men, elevator operators and everyone who had a sad tale and Harvey's ear . . . . Particularly striking was the total absence of calculation: most of the people he helped could never be in a position to return the favor.

See Letter of Lloyd C. Blankfein at 1-2 (Ex. J.3).

Harvey Weinig truly loved being a lawyer because he genuinely enjoyed helping other people. During his almost 20 years of practicing law, Mr. Weinig devoted an extraordinary amount of his time to pro bono work for people who needed help and couldn't afford legal fees. Many of the letters submitted in connection with his sentencing mention yet another person to whom Harvey Weinig provided such services. Professor Twerski reports sending "numerous

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members of our community who had personal or business problems to Harvey. He never charged a nickel and gave them excellent and devoted representation." See Letter of Aaron D. Twerski at 2 (Ex. J.47). Former Assistant District Attorney Barry Birnbaum cited as an example Mr. Weinig's representation of a gas station attendant "who had fallen on difficult times and whom Harvey represented in a variety of matters over the years without ever charging a fee." See Letter of Barry N. Birnbaum at 2 (Ex. J.4).

Jennifer Wood, whose young niece had been twice kidnapped by "a very impaired alcoholic mother, stated that when the need arose for legal assistance, every other lawyer we contacted in New York never got beyond the fact that my brother couldn't pay their requested retainer." See Letter of Jennifer L. Wood at 1-4 (Ex. J.52). Mr. Weinig agreed to take on the litigation without charge, worked "tirelessly" on the case for years and ultimately prevailed. Ms. Wood emphasized that "this was a truly altruistic act on Harvey's part . . . [which] could not accrue to his personal, professional or financial interest." Id. at 3. Ms. Wood stated:

> I will not overreach to speculate about why so many other people so clearly respect and admire this man. I do know that the lives of the entire family of one small child, strangers to this man, were inalterably changed by his simple act of kindness to us.

Id. at 4.

Mr. Weinig continued his public service work even after his arrest and imprisonment. Jonathan Weiss, the Director of Legal Services for the Elderly in New York, stated that he "was surprised when he [Mr. Weinig] came to see me [subsequent to Mr. Weinig's arrest] to volunteer to help us on our cases for the elderly poor . . . . He explained that the publicity surrounding his arrest and indictment had effectively destroyed his law practice but he wanted to do something worthwhile, while awaiting the resolution of his case." See Letter of Jonathan A. Weiss at 1 (Ex. J.51). Mr. Weiss found that Mr. Weinig had "remarkable" rapport

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with the clinic's elderly clients and was of considerable assistance to them. During the time between his arrest and incarceration, Mr. Weinig also read to the blind and did volunteer work at the Coalition for the Homeless in New York City.

Even since his imprisonment, Mr. Weinig has taught literacy skills to inmates, helped illiterate prisoners write letters to their families, tutored inmates studying for the GED, functioned as a law librarian, conducted creative writing workshops, and taught an aerobics class. See Harvey Weinig's Activities While at Fort Dix (Ex. F).[17] Mr. Weinig's Housing Unit Counselor, Luis Reyes, provided [illegible] regarding Mr. Weinig's activities at Fort Dix. Mr. Reyes wrote that Mr. Weinig's "work achievement and his demeanor during work performance has been exceptional." See Letter of Luis Reyes (Ex. N.1). Mr. Reyes described Mr. Weinig as "outstanding" and "gifted," and further stated that Mr. Weinig has "in several instances at the request of staff acted as a facilitator between the staff and inmates with uniformly positive results." Id. Mr. Reyes concluded that Mr. Weinig "has received unequivocal praise for his work from the institution staff. He is seen as an asset to our institution." Id.

Inmates who have come to know Mr. Weinig concur with Mr. Reyes' assessment. Thomas Mickes writes that when he was "most upset" after being denied parole, Mr. Weinig counseled him to remain calm and helped him develop a positive thinking course for fellow inmates. See Letter of Thomas Mickes (Ex. N.3). Jose A. Pons explained that Mr. Weinig has taught him "law, English, philosophy, history, common sense" and has given him "back some of

[17] The letters from various individuals at Fort Dix, including Mr. Weinig's housing unit counselor, are attached as Exhibit N.

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the values and principles in life that [he] had lost or . . . was about to lose." See Letter of Jose A. Pons at 2 (Ex. N.4). Mr. Pons added: "Thanks to [Mr. Weinig], I can proudly say that I have become a much better person, free of hate and bitterness toward those who did me wrong."). Id. at 2.

Upon his release, Mr. Weinig will seek to continue his public service, and he will be an asset to his community. In particular, Mr. Weinig has expressed an interest in counseling youths traumatized by crime. Lucy Friedman, who served for twenty years as Executive Director of Victim Services, a non-profit organization in New York and is currently President of the After-School Corporation, a project dedicated to after-school programs in New York City public schools, informs the Office of the Pardon Attorney that "if Harvey were to be released, [she] would be willing to help him find a position where he could use his talents assisting people in need." See Letter of Lucy Friedman (Ex. K.7). Clay Hiles, chairman of the Correctional Association of New York, gives his personal assurance that Harvey "will have [an appropriate] job immediately upon release from prison." See Letter of Clay Hiles at 2 (Ex. K.8).

C. **Mr. Weinig's Family Needs Him**

Harvey Weinig's extended incarceration has imposed a terrible punishment on his mother, his wife Alice, and his two young sons, Jake and Sam. The attached letters from family friends, therapists who have counseled Mr. Weinig's younger son Sam, and Mr. Weinig's wife Alice provide a powerful statement of the dramatic impact of Mr. Weinig's incarceration on his family.[18]

[18] The letters from Sam's therapists are attached as Exhibit L, and the letters from Mr. Weinig's wife Alice Morey are attached as Exhibit M.

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As many of the letters written about Mr. Weinig attest, Mr. Weinig's greatest passion has always been his two children. Lucy Friedman described Mr. Weinig as "one of the most dedicated loving fathers that [she and her husband] know." See Letter of Lucy Friedman at 2 (Ex. J.17). Cynthia Hayes, an independent management consultant who has known Mr. Weinig for 12 years, reported at sentencing:

> Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life. He structured his business so that he could come home early in the evenings, spending more time with his kids than the average professional. He has been very involved in their education, spending hours reading to the boys, helping with homework, participating in school events and generally conveying the idea that education was a wonderfully and valuable thing. He has done his best to foster their interests in sports (getting up at 4:00 a.m. to take Sam to hockey lessons), music, Hebrew school and other activities. Harvey has also taught the boys the importance of community and giving back to the world with the same generosity with which they have been blessed, helping Jake and Sam grow into the well rounded kids that they are.

See Letter of Cynthia Hayes at 2 (Ex. J.22).

Christina Musrey, the producer of the TV show "The Practice," recounted how she first began babysitting for Mr. Weinig's son Jacob when she was a freshman at Columbia University 16 years ago:

> After our initial introduction, it took many weeks of evenings spent together before [Harvey] felt comfortable leaving his son Jacob, then ten months old, for a few hours. I was assured, by Alice, that it wasn't me. He was that particular with everyone, including relatives, who had offered to babysit. Every Saturday night, for four years, I showed up at six-thirty and was paid to stay whether he and Alice went out or not. Often, we would all begin talking and Harvey would decide to order in and watch his sons fall asleep. . . . For Harvey, having two children meant that they should never suffer if he could help it, and if they did, he would be there to help them find some sort of lesson in all of it. . . . He took the

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> laughter, the fun, the anger and the pain and called it being a father. He was a man who when he loved, loved completely.

See Letter of Christina Musrey at 1-2 (Ex. K.11).

Despite his incarceration, Mr. Weinig has sought to remain a devoted and involved parent. However, his continued absence from his family's daily lives has had a profound effect on them. Ms. Musrey wrote that she has "witnessed an alarming rate of destruction and despair" in Mr. Weinig's family as a result of his extended incarceration, and emphasized how desperately his family needs him. See Letter of Christina Musrey at 2 (Ex. K.11). Lawrence Fox, a longstanding family friend, wrote of Sam and Jake's profound "love for their father and need for his presence," and the importance of Mr. Weinig's return "to assist his sons to become productive contributors to society." See Letter of Lawrence I. Fox at 2 (Ex. K.6).

Mr. Weinig's arrest and incarceration have caused his youngest son Sam to suffer a major depressive disorder. See Letters of Dr. Owen Lewis, a child psychiatrist associated with Columbia University (Exs. L.2 & L.3).[19] Last spring, Sam was committed for six weeks to the New York State Psychiatric Institute for severe, recurrent and incapacitating depression. He now resides away from home in a small boarding school in upstate New York which provides a therapeutic environment. Sam's school counselor, Betsey Thomas-Train, wrote: "[H]is father's incarceration has been the most traumatic event of his childhood, bringing Sam a sense of shame, abandonment, distrust, fear, and a chronic feeling of injustice and inadequacy. I would like to ask for your consideration in granting clemency to his father, so that the ongoing harmful effects

[19] Mr. Weinig was arrested on November 30, 1994, in front of both his sons, then ages 8 and 11, when eight FBI and DEA agents stormed his house at 5:30 a.m. with guns drawn. See Letter of Alice Morey, Feb. 24, 2000, at 4 (Ex. M).

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to Sam could be lessened." See Letter of Betsey Thomas-Train at 1 (Ex. L.1). Thomas Concannon, who has been an attorney at the Legal Aid Society in New York for 28 years and currently heads the Federal Defender Division of the Eastern District of New York, vivdly conveyed Sam's suffering: "[When Sam] was committed at New York State Psychiatric Institute and not free to leave, he said, 'So my dad's in jail and now I am, too.'" See Letter of Thomas J. Concannon at 2 (Ex. K.3). As another family friend points out, "[n]o years of imprisonment can be harder than the knowledge that you cannot hold your child and comfort [him] in a psychiatric ward during [his] greatest time of pain." See Letter of Tamara R. Igel (Ex. K.9).

Mr. Weinig's lengthy incarceration has also severely affected his older son Jake. Jake has exhibited his loss by becoming an angry and difficult teenager. While Mr. Weinig continues to be the only adult whom Jake confides in and listens to, their telephone relationship is a tenuous one that is growing more and more difficult to maintain. Jake graduates from high school in June 2001 and already mourns the fact that his father will not be there to witness this important event. See Letters of Alice Morey (Ex. M). The loss of his father, with whom he had such a close relationship, has been devastating.

Doctors Katha Rossein and Ronald Razzore – whom Mr. Weinig represented and who have known the Weinig family for a long time – note that "when a person is imprisoned the true punishment seems to be to the families of the person in jail. We have known Harvey's wife, Alice, and his teenage sons Sam and Jacob since they were small and nothing has been more devastating than these last four years in which Harvey Weinig has been in prison." See Letter of Katha Rossein, M.D., and Ronald Razzore, M.D. (Ex. K.12). Mr. Weinig's wife Alice adds:

> As for me, my profound loss and pain is my loneliness for my life companion. The man with whom I shared my days and nights for more than twenty years has been taken from me . . . . However, the

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> major part of my grief is neither for my personal loss of my life partner nor the financial devastation of his departure. It is for the loss of the family unit which I cherished so and has been taken from me. I don't know if that whole can ever be put back together again, but I know that, as long as I breathe, I will try to make sure that it does.

See Letter of Alice Morey, Feb. 24, 2000, at 4-5 (Ex. M). Commutation of Mr. Weinig's sentence would permit him to provide support to his family, rebuild his relationship with his sons and seek to heal the emotional scars that have resulted from his actions.

D. Mr. Weinig Does Not Require Additional Punishment or Rehabilitation

Finally, Mr. Weinig does not require further punishment or further rehabilitation. His arrest, forced resignation from the New York Bar, loss of his legal practice, public humiliation in the press,[20] forfeiture of assets, imprisonment for almost four years[21] and long separation from his family have imposed severe penalties for his conduct. Moreover, given Mr. Weinig's lack of any prior criminal record, his record of public service and devotion to his family, his experience in this case, and his exemplary conduct in prison, there is no basis whatsoever to believe that Mr. Weinig will ever again commit a crime. There is simply no reason to keep Mr. Weinig in prison, and his continued incarceration for seven more years is unnecessary and inappropriate. As Susan Bryant puts it: "I know from talking to [Harvey] that he has intense remorse for his crimes. He does not need to spend another 6 years in jail to learn his lesson or to be sufficiently punished for what he has done." See Letter of Susan Bryant at 3

[20] Articles in the *New York Times*, the *New York Law Journal*, the *Wall Street Journal*, the *Houston Chronicle*, the *Seattle Post-Intelligencer* and other papers widely publicized Mr. Weinig's involvement in the conspiracy. See Ex. H.

[21] Even if Mr. Weinig's requested commutation were granted, he would still serve five years in prison.

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(Ex. K.2). Clay Hiles, present chairman of the Correctional Association of New York and immediate past chairman of the Osborne Association, an organization that provides services to former prisoners, sums up the sad injustice of keeping Harvey Weinig incarcerated:

> For more than 20 years I have worked, as an attorney, an administrator, and a volunteer in the criminal justice system. I have considerable experience with the nature and consequences of crime and punishment, and I cannot imagine any useful purpose to be served by Harvey's continued incarceration. . . . Every day he remains in prison is a day of absurd waste of a man whom the rest of us – family, friends, and people who have never heard of Harvey – need to have participating fully in our world.

See Letter of Clay Hiles at 2 (Ex. K.8).

IV. CONCLUSION

Harvey Weinig is a good and decent man who engaged in an aberrational episode of criminal activity. There is no excuse for his offenses. But he pleaded guilty, cooperated with the government, and does not deserve to be punished far more harshly than his more culpable co-defendants.

Our criminal justice system is founded upon the principle of equal treatment under the law. The disparity between Mr. Weinig's 11-year, three-month sentence and the sentences accorded his codefendants is unconscionable. This extraordinary case warrants the exercise of the President's power of commutation to reduce Mr. Weinig's sentence.

For the reasons cited above, Mr. Weinig respectfully requests that the President grant his Petition for Commutation and reduce his sentence to five years.

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Respectfully submitted,

Harvey Weinig

Reid H. Weingarten
STEPTOE & JOHNSON, LLP
1330 Connecticut Ave., NW
Washington, DC 20036-1795
(202) 429-3000

Counsel for Harvey Weinig

Dated: ~~March~~ April 6, 2000

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STEPTOE & JOHNSON LLP
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Facsimile 202.429.3902
www.steptoe.com

Reid H. Weingarten
[redacted]

April 3, 2000

Mr. Roger Adams, Esq.
Pardon Attorney
U.S. Department of Justice
Office of the Pardon Attorney
500 First Street, N.W.
Suite 400
Washington, DC 20530

RE: **Petition for Commutation of Sentence of Harvey Weinig, Reg. No. 00100-748**

Dear Mr. Adams:

Enclosed please find Harvey Weinig's Petition for Commutation of Sentence, Memorandum in Support, and accompanying exhibits. I hope that you will find Mr. Weinig as sympathetic and deserving of commutation as I do.

Feel free to contact me if you have any questions or would like to schedule an appointment to discuss Mr. Weinig's case. I look forward to hearing from you or one of the attorneys in your office.

Very truly yours,

Reid H. Weingarten

Enclosures

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EXHIBIT
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— Meredith — 128

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Reid H. Weingarten
[redacted]

April 7, 2000

HAND DELIVERY

Beth Nolan, Esquire
Counsel to the President
The White House
Washington, D.C. 20502

Re: Harvey Weinig

Dear Ms. Nolan:

Please find enclosed a petition for commutation of sentence for Harvey Weinig that we filed today with the pardon attorney. I would like to speak to you about this at your convenience because I expect there will be contacts made at a very high level on behalf of Mr. Weinig and I don't want anything to catch you by surprise.

I hope you are well.

My best.

Reid H. Weingarten

RHW/pk
enclosure

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EXHIBIT
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Meredith — call me

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

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Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.steptoe.com

[redacted]

April 3, 2000

Bert — I need to discuss this one with you. Can you give me a call? Jack Podesta

Mr. Roger Adams, Esq.
Pardon Attorney
U.S. Department of Justice
Office of the Pardon Attorney
500 First Street, N.W.
Suite 400
Washington, DC 20530

RE: **Petition for Commutation of Sentence of Harvey Weinig, Reg. No. 00100-748**

Dear Mr. Adams:

Enclosed please find Harvey Weinig's Petition for Commutation of Sentence, Memorandum in Support, and accompanying exhibits. I hope that you will find Mr. Weinig as sympathetic and deserving of commutation as I do.

Feel free to contact me if you have any questions or would like to schedule an appointment to discuss Mr. Weinig's case. I look forward to hearing from you or one of the attorneys in your office.

Very truly yours,

Reid H. Weingarten

Enclosures

CLI[illegible]

EXHIBIT
17

clemency

THE WHITE HOUSE
WASHINGTON

May 25, 2000

Reid H. Weingarten
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Dear Mr. Weingarten:

Thank you for your letter of April 7, 2000, and for sending me a copy of the petition for executive clemency for Harvey Weinig that was filed with the Office of the Pardon Attorney.

As you may know, the Department of Justice will conduct a thorough review of Mr. Weinig's application and will then forward it, along with their recommendation regarding clemency, to the President.

We will keep your correspondence in our office to ensure it is available to the President if and when Mr. Weinig's application comes before him.

Thank you again for contacting me about this important matter.

Sincerely,

Beth Nolan
Counsel to the President



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THE WHITE HOUSE
WASHINGTON

April 7, 2000

from Meredith - correct & send out

Reid H. Weingarten
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Dear Mr. Weingarten:

Thank you ~~very much~~ for your letter of April 7, 2000, and for sending me a copy of the petition for executive clemency for Harvey Weinig that was filed with the Office of the Pardon Attorney.

As you may know, the Department of Justice will conduct a thorough review of Mr. Weinig's application and will then forward it, along with their recommendation ~~as to whether~~ regarding clemency ~~should be granted~~, to the President.

We will keep your correspondence in our office to ensure it is available to the President if and when Mr. Weinig's application comes before him.

Thank you again for contacting me about this important matter.

Sincerely,

Beth Nolan
Counsel to the President

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Derek — 4/18
This is the
copy Beth
OK'd. Emily

draft
April 18, 2000

Reid H. Weingarten
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

SK.

Dear Mr. Weingarten:

Thank you very much for your letter of April 7, 2000, and for sending me a copy of the petition for executive clemency for Harvey Weinig that was filed with the Office of the Pardon Attorney.

As you may know, the Department of Justice will conduct a thorough review of Mr. Weinig's application and will then forward it, along with their recommendation as to whether clemency should be granted, to the President.

We will keep your correspondence in our office to ensure it is available to the President if and when Mr. Weinig's application comes before him.

Thank you again for contacting me about this important matter.

Sincerely,

Beth Nolan
Counsel to the President

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ALICE MOREY
[redacted]

February 24, 2000

Roger Adams
Pardon Attorney
U.S. Department of Justice
Office of the Pardon Attorney
500 First Street, N.W.
Suite 400
Washington, D.C. 20530

Re: Petition of Harvey Weinig for Commutation of Sentence

Dear Mr. Adams:

I am Harvey Weinig's wife and I write this letter in support of his Petition for Commutation of Sentence. Harvey, who is fifty-one years old, has been incarcerated at Federal Correctional Institution Fort Dix since April 19, 1996. He is serving a sentence of eleven years and three months (135 months) for a conviction of money laundering and misprision of a felony. Prior to his arrest on November 30, 1994, Harvey Weinig had practiced law for more than twenty years, and had never been personally involved with the criminal justice system

I am also fifty-one years old and am a law professor at the City University of New York School of Law. Harvey and I have two sons, Jacob who is seventeen and is in the eleventh grade, and Samuel who is thirteen and in the eighth grade. Since Harvey's incarceration, I have been doing my best to keep our family intact, both emotionally and financially. However, as I will try to articulate in this letter, it is sadly evident that my boys and I are on a downward spiral. I am fearful that if Harvey has to serve the full remainder of his sentence – his release date is April 19, 2007, more than seven years away – our family will not be able to survive.

My husband is a good man who made several terrible mistakes during a very brief period of his life. I question whether it is the intent of our criminal justice system to compel him to pay for his mistakes literally with his life and the life of our family.

BRIEF HISTORY OF THE OFFENSE

In May of 1993, Berger and Steingut, the law firm at which Harvey had been a partner for a number of years, went into dissolution. In the confusion of its endi

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EXHIBIT
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Harvey set up a new practice with Robert Hirsch, a recently arrived partner at Berger and Steingut, whom Harvey had known for less than a year. One of Hirsch's longstanding clients was a man named Peter Tohmes who, unfortunately, turned out to be a money launderer for a Colombian drug cartel.

It is not clear whether Hirsch knew all along the nature of Tohmes' business - he has claimed he did not. What is clear is that, for at least several months prior to his arrest, Harvey knew or should have known that Tohmes and, therefore, Harvey's law firm, was involved in some sort of illegal activity. Harvey's actual participation was exceedingly limited – Tohmes was Hirsch's client and Harvey never spoke with him. However, the fact remains that Harvey acted on behalf of Tohmes in a few instances when Hirsch was not available, accepted the cash payments that Tohmes made to the firm, and, most importantly, did not take the necessary steps to extricate himself from Hirsch and Hirsch's client when he realized or should have realized that they were involved in illegal activities.

In September of 1994, the government arrested Hirsch, whose phone calls and other actions they had been monitoring for a few months. Hirsch made a quick deal with the federal prosecutors and, for several months, wore a concealed wire to gather evidence against Harvey and other potential co-defendants. Interestingly enough, prior to Hirsch's arrest and subsequent cooperation, the government had little or no evidence that Harvey was connected in any way other than as Hirsch's law partner. However, once Hirsch began cooperating with the federal government, he began involving Harvey in his dealings with Peter Tohmes.

On November 30, 1994, Harvey and about twenty other co-defendants were arrested. Other than identifying Harvey as the ringleader of the conspiracy because he had introduced Hirsch to Richard Spence, a major co-defendant and prior client of Harvey's, the complaint barely mentions Harvey Weinig, perhaps because he had little to do with the illegal activities. The federal prosecutors consistentiy maintained that Harvey had a dual personality that his friends, relatives, and I had failed to ever discern. Indeed, they seemed to base their "theory of the case" on this notion of Harvey as a Dr. Jekyl and Mr. Hyde, referring to him in the complaint as "Weinig, a/k/a The Wing", despite the fact that there was no subsequent evidence that he had ever been known by that name. As a law professor, I know how important it is to have a "theory of the case". However, I also know that the professional responsibility of the prosecutors requires this to be based on fact, not assumption or creative license.

For a host of reasons, mostly emotional and financial, Harvey ultimately pled guilty before the Honorable Kevin Duffy of the United States District Court for the Southern District of New York. Although Harvey's lawyer had been hopeful that the court would depart downward in sentencing, Judge Duffy sentenced Harvey to the top of the guidelines without articulating his reasons. In any event, he certainly did not take into account the fact that Harvey had led an exemplary life for forty-five years, up until he met and went into partnership with Robert Hirsch. Nor did it appear that Judge Duffy

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read any of the over hundred letters written in Harvey's behalf. These letters were from friends, relatives, former colleagues including some former prosecutors, and mostly from clients and others whom Harvey had helped and taken care of, often for no charge.

With the exception of Harvey, all of the twenty or so co-defendants in this case received relatively light sentences and most have been out of jail for some time. Hirsch, who was sentenced by a different judge, received a sentence of only three years, despite the fact that, while he was cooperating with the federal agents, he was rearrested for engaging in essentially the same kind of illegal activity. Although, as an attorney, I understand the need for prosecutors to make deals, it is cruelly inequitable that Hirsch and the other major players received sentences so far lighter than that which Harvey received, despite Harvey's less significant role.

BACKGROUND

I met Harvey Weinig in 1972 when we were both law students at Hofstra Law School. Although we did not get married until March of 1980, and were often physically apart between our first meeting and marriage, we have been inextricably bound emotionally from the very first days of our relationship. Harvey has been my best friend for nearly thirty years and I believe that I am his.

Harvey and I desperately wanted to be parents and spent a few difficult years unsuccessfully "trying" to have a child. The failed attempts and obligatory tests were trying for both of us, but in some inexplicable way confirmed the "for better or worse" aspect of our marriage and, perhaps, sparked Harvey's intense devotion to the job of fathering our two sons.

Harvey was (and continues to be to the extent that he is able) among the most interested, concerned, involved and doting father's that I have ever known. It was clearly his intention to be involved with his children in a way that he had not experienced with his own father who died when Harvey was nineteen. His father had been habitually ill with heart disease and recurrent bouts of depression, and had always been disconnected and remote from Harvey and his sister. It was completely the opposite in our household. From infancy until they would no longer suffer him, Harvey gave our boys their baths and attended to most of their physical needs. Indeed, it was a standing joke in our family that "mommy was a lawyer who didn't do ears or nails; daddy did those things". Harvey rarely, if ever, missed a school conference, play, sports event, or doctor's appointment. He still is the person that Jacob, our oldest, confides in and seeks out for comfort and advice.

While I have always rejoiced in the equality of our parenting, I am now immensely aware of why Harvey's absence from the home has been so crushing to all of us.

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THE EFFECT OF HARVEY'S ABSENCE ON THE FAMILY

Until Harvey's arrest in 1994 our family life was quite simple and extremely happy. Both of our sons were thriving academically, emotionally, and socially. Sadly, this is no longer the case. The effects of Harvey's arrest and subsequent imprisonment have been devastating to both of my boys.

At 5:30 in the morning on November 30, 1994, a team of eight or nine agents from the DEA, FBI and the NYC Police Department barged into our apartment with guns and flack jackets to arrest my husband. My younger son Sam, then eight years old, was awake and witness to the trauma of these men coming into our home, placing his father in handcuffs and physically segregating him from the rest of us, and then proceeding to search our home.

Sadly, Sam has never been the same. Since Harvey's arrest, Sam has been under the care of a psychiatrist who initially diagnosed Sam as suffering from post-traumatic stress syndrome. Last spring, Sam had to be committed to the New York State Psychiatric Institute as a result of his severe, recurrent and incapacitating depression. Although he returned home after six weeks, he still was, and still is, extremely fragile. It was clear that he could no longer attend the academic school that he has attended since pre-kindergarten and had excelled in for so long. He is withdrawn, has difficulty with peers, and is unable to concentrate. I have been fortunate to secure him a place a small boarding school which boasts a quasi-therapeutic environment. While the school seems like a good place for him to recuperate and regroup, his going away is just another loss for this family.

Whereas Sam's despair has resulted in depression, our older son Jacob has become a difficult and angry adolescent. His anger is more than ordinary teenage angst. It has been exacerbated by the disruption of his life and by the pain he continues to suffer because of his father's incarceration and absence from home. Right now his father is the only adult in whom Jake confides and trusts. Although he speaks with Harvey on the phone daily, it is becoming harder and harder for him and he is withdrawing even more.

Much of the time, Jacob denies the causes of his pain and focuses his anger on me and his brother Sam. He views me as unreasonable and incompetent and his brother as irrational and spoiled. For the past year, he has been very difficult for me to control, often refusing to obey me. His grades have fallen from superior to average and he continues to involve himself with undesirable friends and activities. Because of his repeated behavioral lapses, I was compelled to have Jacob live away from home with friends of ours for over two months last spring.

As for me, my profound loss and pain is my loneliness for my life companion. The man with whom I shared my days and nights for more than twenty years has been taken from me. While I am not a widow, the experience has not been far from it. My financial ship continues to take on water, remaining afloat largely as the result of the

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kindness and charity of family and friends. For instance, since Harvey's arrest, both of our sons have been receiving half scholarships from their private schools with the other half of their tuition being paid for with loans and gifts from relatives. Before Harvey's arrest, our family income came mostly from his earnings as an attorney in private practice. Although I, too, contributed to our family income, my work has always been in the public sector where, as public interest lawyer, I earn far less money.

However, the major part of my grief is neither for my personal loss of my life partner nor the financial devastation of his departure. It is for the loss of the family unit which I cherished so and has been taken from me. I don't know if that whole can ever be put back together again, but I know that, as long as I breathe, I will try to make sure that it does.

I am aware that many families are destroyed as a consequence of a spouse's incarceration. I am also aware that you receive thousands of "last chance" applications such as this one. While I am not aware of the merits of those other applications and I cannot readily tell you why this one should prevail while the vast majority do not, I can tell you that my family desperately needs its father and husband to rejoin it. Harvey Weinig has already received a punishment from which he will never recover and, I know for sure, will never again involve himself in any illegal conduct or situation. Although he was convicted of very serious felonies, I do not believe that Harvey Weinig is a criminal; rather, he is a man who was unduly greedy and did some very stupid things. For these reasons, I urge you to grant this application and commute my husband's lengthy sentence.

Very truly yours,

Alice Morey

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D

1714 Connecticut Avenue, N.W. • Washington, D.C. 20009-1103
202/986-0033 Fax 202/986-0014

February 28, 2000

The Hon. Roger C. Adams
Pardon Attorney
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Adams:

Papers filed with your office seek a clemency (or commutation of sentence) for Harvey Weinig, my cousin, who is currently serving an eleven-year term for money laundering and misprision of a felony.

I write from the vantage point of someone who has seen directly the suffering experienced by Harvey and his family, and from the perspective of having served in the Executive Branch of government and observed law enforcement policies being formulated. No conceivable societal interest is being served by forcing Harvey to remain in prison for the entire length of his maximum sentence. He deserves the act of grace for which his family has petitioned you and the Department of Justice.

First, Harvey's sentence is disproportionate. All other persons charged in the crime at the core of Harvey's case – all more deeply involved than he – all received lesser sentences. Even though all of his codefendants have been set free, Harvey is still in prison and will be through 2006. On its face, that is not fair.

Second, Harvey's wife and sons are bearing the brunt of his punishment with enormous force. His youngest son, Sam, has been hospitalized, sent to a special school, and separated from his family, because his father's absence has affected him so profoundly. His elder son, Jacob, has become alienated from his mother, Alice. Genuine harm is befalling totally innocent kids. If Harvey were forced to serve his entire sentence, Alice fears he would return to an irretrievably broken family.

Third, Harvey spent most of his lifetime in service to others, being a good and decent father, and a contributing member of the community. As he was, he can be so again – if his term in prison ends while his spirit is still intact. Surely, our system of justice must contemplate his future after punishment and not be solely concerned with preserving the length of his term itself.

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EXHIBIT
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In conclusion, I strongly believe that the interests of justice have been vindicated. Harvey is contrite. Harvey has been punished. Only he remains incarcerated, as his more centrally involved co-defendants are free. Now, it must be determined whether "the public welfare will be better served by inflicting less than what the judgment fixed." I deeply hope you can be an instrument of justice and mercy in his case by supporting his petition and permitting him to return to society and to the family who needs and loves him so.

Sincerely,

David E. Dreyer

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Draft
December 17, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN
BRUCE LINDSEY
MEREDITH CABE

SUBJECT: Executive Clemency

Except where noted, the Department of Justice has not forwarded its recommendation to you in the following cases. We nonetheless recommend you consider granting clemency to these individuals.

I. Commutations



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NAME/DISTRICT	OFFENSE	RATIONALE	RECOMMENDED ACTION
John Ballis E.D. Texas (1997) S.D. Texas (1990 and 1993) Age: 53	Aiding and abetting all of the following: bank fraud; bank bribery; illegal participation; conspiracy to violate federal law; misapplication by S&L employee; false entries; obstruction of justice. Three convictions: 1. 1990 (S.D. TX) orig. plea agreement. 2 years' probation and community svc. 2. 1993 (S.D.TX) sentenced to 150 months 3. 1997 (E.D. TX) sentenced to 41 months (concurrent) (Began serving in 1994. Paroled in 1999. 4 years remain of sentence. Owes bulk of $250K fine and $4.5M restitution)	Pled guilty to one count of making a false statement and helped convict another S&L person; later prosecuted twice more, for offenses he argues were covered by the original plea agreement. Sentencing judge who presided over plea agreement supports clemency, agrees that conduct shd have been covered by orig. plea agreement.	
Dorothy Gaines S.D. Alabama (1995) Age: 42	Conspiracy with intent to distribute crack cocaine, possession with intent to distribute crack cocaine. Sentenced to 235 months' imprisonment and 5 years' supervised release.	Was involved in a relationship with a drug courier. Despite minor role, received a sentence twice the average sentence of more substantial participants in drug conspiracy. Only evidence of participation by petitioner in specific transaction was one-time delivery of small amount of crack cocaine, and tolerance of boyfriend's activity (occasionally in her home). Sentencing judge does not object.	
Bob Griffin	Bribery and mail fraud	Seeks commutation to	

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W.D. Missouri (1997) Age: 65	(as Speaker of Missouri House of Representatives, received money from co-defendant (a consultant and lobbyist) in exchange for his steering clients to her) Sentenced to 48 months and 1 day in prison, three years' supervised release, and fined $7,500. Projected for release in July 2001.	allow him to care for wife, who is immobilized and unable to speak following a stroke; admits wrongdoing and expresses sincere remorse; former Rep. Alan Wheat, all Democratic members of Missouri Senate, at least 20 members of Missouri House of Representatives, former Sen. Thomas Eagleton, Rep. Pat Danner, and other state and local officials from Missouri support clemency. Note: The Deputy Attorney General recommends against clemency.	
Peter MacDonald			
Kemba Smith E.D. Virginia (1994) Age: 29	Conspiracy to distribute and possess with intent crack cocaine; conspiracy to launder money; making false statements to a federal agent. Pled guilty. Sentenced to 294 months' imprisonment and five years' supervised release.		
Harvey Weinig S.D.N.Y. (1996) Age: 52	Conspiracy to commit money laundering; misprision of felony. Sentenced to 135 months' imprisonment, three years' supervised release, and criminal forfeiture. Has served 56 months of his sentence.	The U.S Attorney for the Southern District of New York opposes commutation.	

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II. Pardons

NAME/DISTRICT	OFFENSE	RATIONALE
Garran Barker E.D. Arkansas (1986) Age: 44	Conspiracy to commit wire fraud. Sentenced to 20 months, reduced to 15 months. Released December 1987.	

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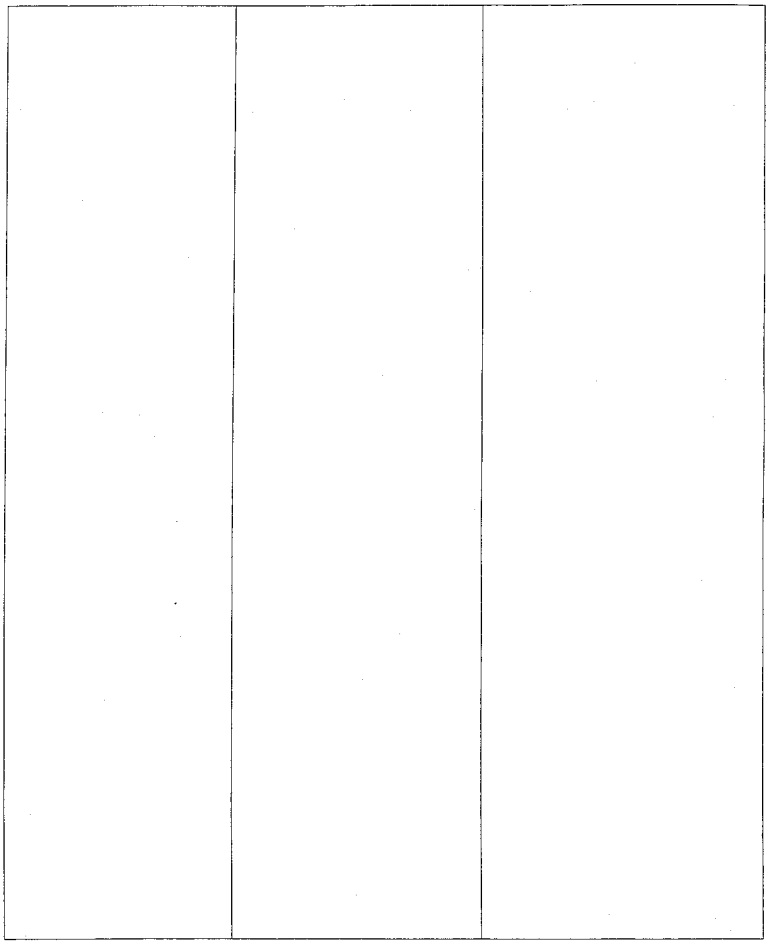

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Charles Besser		
Harlan Richard Billings (?)		
Charles Boggs (?) E.D. Arkansas (1977) Age: 74	Receipt of stolen motor vehicle that was part of interstate commerce. Sentenced to 60 days in jail, 22 months' probation, and fined $1500.	
Bill Borders S.D. Florida (1982) Age: 61	Convicted of offering bribe to Alcee Hastings (who was acquitted, then subsequently impeached). Sentenced to 5 years' imprisonment on four counts, to run concurrently, and fined $35,000.	
Ernest Harley Cox (?) E.D. Arkansas (1991) Age: 70	Conspiracy to defraud a federally insured S&L; misapplication of federally insured funds. Sentenced to 36 months (reduced to 16 months) and fined $70,000.	
Irving Drobny W.D. Texas (1983) Age: 66	Aiding and abetting securities fraud. Sentenced to four years' imprisonment.	
Philip Grandmaison D. New Hampshire (1996) Age: 50	Mail fraud. Sentenced to one year and one day.	
Rick Hendrick W.D. N.C. (1997) Age: 51	Mail fraud. Sentenced to three years' probation, with the condition of home detention for twelve months, fined $250,000, and	Suffers from CML, a rare form of leukemia.

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	ordered to pay restitution.	
David Herdlinger W.D. Arkansas (1986) Age: ? – no application	Mail fraud. Sentenced to three years' imprisonment.	
Judd Blair Hirschberg		
Marty Hughes		
Ruben H. Johnson		
Larry Killough		
Salim Bonnor Lewis (?)		
Charles W. Morgan		
Archibald Schaffer III		
Thomas Andrew Warren		
Jack Weinstein		

DECISION:

GRANT AS RECOMMENDED: _____

DENY: _____

DISCUSS: _____

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Draft
December 20, 2000

MEMORANDUM FOR THE PRESIDENT

FROM: BETH NOLAN
BRUCE LINDSEY
MEREDITH CABE

SUBJECT: Executive Clemency

Except where noted, the Department of Justice has not forwarded its recommendation to you in the following cases. We nonetheless recommend you consider granting clemency to these individuals.

I. Commutations

NAME/DISTRICT	OFFENSE	RATIONALE	RECOMMENDED ACTION
John Ballis E.D. Texas (1997) S.D. Texas (1990 and 1993) Age: 53	Aiding and abetting all of the following: bank fraud; bank bribery; illegal participation; conspiracy to violate federal law; misapplication by S&L employee; false entries; obstruction of justice. Three convictions: 1. 1990 (S.D. TX) orig. plea agreement. 2 years' probation and community svc. 2. 1993 (S.D.TX) sentenced to 150 months 3. 1997 (E.D. TX) sentenced to 41 months (concurrent) (Began serving in 1994. Paroled in 1999. 4 years remain of sentence. Owes bulk of $400K in fines and $4.5M restitution)	Pled guilty to one count of making a false statement and helped convict another S&L person; later prosecuted twice more, for offenses he argues were covered by the original plea agreement. Sentencing judge who presided over plea agreement supports clemency, and agrees that all conduct shd have been covered by orig. plea agreement.	Commute remaining period of sentence of confinement (for which he is currently paroled), and remit fine, leaving intact the obligation to pay restitution.

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Dorothy Gaines S.D. Alabama (1995) Age: 42	Conspiracy with intent to distribute crack cocaine, possession with intent to distribute crack cocaine. Sentenced to 235 months' imprisonment and 5 years' supervised release. Has served approx. 6 ½ years; projected for release in 2012.	Was involved in a relationship with a drug courier. Despite minor role, received a sentence twice the average sentence of more substantial participants in drug conspiracy. Only evidence of participation by petitioner in specific transaction was one-time delivery of small amount of crack cocaine, and tolerance of boyfriend's activity (occasionally in her home). Sentencing judge does not object to commutation.	Commute sentence to time served, leaving intact the period of supervised release.
Bob Griffin W.D. Missouri (1997) Age: 65	Bribery and mail fraud (as Speaker of Missouri House of Representatives, received payments from co-defendant (a consultant who lobbied the legislature) in exchange for his steering business to her). Sentenced to 48 months and 1 day in prison, three years' supervised release, and fined $7,500. Projected for release in July 2001.	Admits wrongdoing and expresses sincere remorse; seeks commutation to allow him to care for wife, who is immobilized and unable to speak following a stroke; former Rep. Alan Wheat, all Democratic members of Missouri Senate, at least 20 members of Missouri House of Representatives, Sen. Thomas Eagleton, Rep. Pat Danner, former Missouri Supreme Court Chief Justice Albert Rendlen, and other state and local officials from Missouri support clemency. Note: the Deputy Attorney General recommends against clemency.	Commute sentence to time served, leaving intact period of supervised release and any remaining financial obligations.

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Peter MacDonald D. Arizona (1992 & 1993) Age: 71	1.Racketeering; racketeering conspiracy; extortion by an Indian tribal official; mail fraud; wire fraud; interstate transportation in aid of racketeering. 2. Conspiracy to commit kidnapping, third degree burglary. 1. Sentenced to 60 months' imprisonment and three years' supervised release; fined $10,000; ordered to pay $1,500,000 restitution to the Navajo Nation; and required to pay $800 in felony assessments. 2. Sentenced to 175 months' imprisonment and five years' supervised release; fined $5,000; ordered to pay $4,431.03 restitution to the Navajo Nation; and required to pay $100 in felony assessments. Projected for release in October, 2005.	Petitioner suffers from serious health problems; impt. to Navajo spiritual tradition for petitioner to be on land sacred to tribe; petition has received substantial support from the Navajo community, including the Navajo Code Talkers Association; Navajo Nation Tribal Council has pardoned petitioner; has support of Senators Domenici, Bingaman, and Goldwater, Representative Udall, and President Carter. Note: the Deputy Attorney General recommends against clemency.	Commute sentence to time served, leaving intact period of supervised release and any remaining financial obligations.

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Kemba Smith E.D. Virginia (1994) Age: 29	Conspiracy to distribute and possess with intent to distribute crack cocaine; conspiracy to launder money; making false statements to a federal agent. Sentenced to 294 months' imprisonment and five years' supervised release. Has served 6 years 3 months; projected for release in 2016.	Minor role in offense, committed because involved in abusive relationship with drug dealer (petitioner was of college age at time). Because boyfriend was killed, petitioner lost the opportunity to cooperate with authorities and receive a lesser sentence. Extremely lengthy sentence disproportionate to minor role. Support from numerous groups and individuals, include Kurt Schmoke, Representatives Clyburn and Cummings (on behalf of CBC), and the NAACP Legal Defense Fund.	Commute sentence to time served, leaving intact period of supervised release.
Harvey Weinig S.D.N.Y. (1996) Age: 52	Conspiracy to commit money laundering; misprision of felony (extortion scheme involving kidnapping). Assisted law partner in processing wire transfers for partner's client (who he later discovered was a drug dealer). Sentenced to 135 months' imprisonment, three years' supervised release, and criminal forfeiture of house and other assets. Has served 56 months of his sentence (scheduled for release in 2006).	More culpable co-defendants, including the law partner who directed the kidnapping, received shorter sentences and have been released. Note: the Deputy Attorney General recommends against clemency.	Commute to 108 months? Since he agreed in guilty plea range should be 108-135 months?

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II. Pardons

NAME/DISTRICT	OFFENSE	RATIONALE
Garran Barker E.D. Arkansas (1986) Age: 44	Conspiracy to commit wire fraud. (As account executive, participated in illegal scheme to transfer funds into an investment account.) Sentenced to 20 months, reduced to 15 months. Released December 1987.	Since offense, petitioner has led law-abiding and productive life. Recently granted pardon to co-defendant, Carl David Hamilton; as governor, granted conditional state pardon. Successor to victim bank does not object. Petitioner expresses deep remorse; very involved in community; favorable character recommendations, including from Bill Bowen, state rep. Mary Anne Salmon.
Charles Boggs E.D. Arkansas (1977) Age: 74	Receipt of stolen motor vehicle that was part of interstate commerce (purchased stolen bulldozer). Sentenced to 60 days in jail, 22 months' probation, and fined $1500.	Remoteness and minor nature of offense. Since conviction has led law-abiding and productive life; favorable character references; expresses remorse; seeks restoration of civil rights so that he can once again hunt.

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Bill Borders S.D. Florida (1982) Age: 61	Conspiracy to corruptly solicit and accept money for influencing the official acts of a federal district judge (Alcee Hastings) and to defraud the United Stated in connection with performance of lawful government functions. Obstruction of justice and aiding and abetting obstruction of justice. Traveling interstate with intent to commit bribery. (Convicted of attempting to influence then-Judge Alcee Hastings.) Sentenced to 5 years' imprisonment on four counts, to run concurrently, and fined $35,000. (Released on parole after 31 months).	Since conviction, has led stable, productive, and law-abiding life. Now serving as general counsel to Rep. Earl Hilliard. Very favorable character recommendations, including from National Bar Association, Congressional Black Caucus, Dean Bullock of Howard Law School, Reps. Hilliard and Thompson, Martin Luther King, III, and Walter Fauntroy, President of National Black Leadership Roundtable. Accepts responsibility and expresses sincere remorse; active involvement in community service. Note: the Deputy Attorney General recommends against clemency.
Ernest Harley Cox E.D. Arkansas (1991) Age: 70	Conspiracy to defraud a federally insured S&L; misapplication of federally insured funds. (As director of FirstSouth, borrowed $25.2 M through his companies and used funds to purchase delinquent FirstSouth loans, resulting in preparation of false loan documents containing overstated bank income.) Sentenced to 36 months (reduced to 16 months) and fined $70,000.	Favorable character references, including Louis Ramsey, Jay Bradford. Offense appears to be aberration in otherwise law-abiding life; active involvement in community. Seeks pardon to regain law license and to hunt.
Irving Drobny W.D. Texas (1983) Age: 66	Aiding and abetting securities fraud. (Participated in illegal transaction through which corporation's funds were used to allow petitioner's associate to obtain controlling interest in same corporation.) Sentenced to four years' imprisonment.	Remoteness of offense. Seeks pardon to avoid adverse effects of conviction on current employer, a regulated insurance company. Honorable service in U.S. Army. Involved in charitable activities. Offense appears to be aberration in otherwise law-abiding life. Expresses remorse.

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Philip Grandmaison D. New Hampshire (1996) Age: 50	Mail fraud. (As Alderman, recused self from contracting decision involving his employer and lobbied and gave extremely small gifts, such as paying for a golf game and restaurant gift certificates, to other Aldermen). Sentenced to one year and one day.	Offense appears to be aberration in otherwise law-abiding life. Extensive community involvement, including strong commitment to public service. Accepts responsibility and expresses sincere remorse.
J. R. "Rick" Hendrick W.D. N.C. (1997) Age: 51	Mail fraud. (As Honda dealer, gave gifts to Honda executives to get preferential dealership rights and access to vehicles.) Sentenced to three years' probation, with the condition of home detention for twelve months, fined $250,000, and ordered to pay restitution.	Suffers from CML, a rare form of leukemia. Extensive involvement in community and charitable activities, particularly with regard to illnesses like leukemia, including funding efforts to locate and encourage minority marrow donors. Very favorable character references, including Governors Jim Hunt and Mike Easeley, Harvey Gantt, Mayor Pat McCrory of Charlotte, and Rep. Sue Myrick. Expresses genuine remorse.
David Herdlinger W.D. Arkansas (1986) Age: 51	Mail fraud. (As City Attorney for Springdale, AR, and Municipal Judge for Johnson, AR, accepted payments from individuals charges with driving while intoxicated in return for reducing or dismissing charges.) Sentenced to three years' imprisonment.	Has lived stable, law-abiding life since conviction; very favorable character references, including Senators David Pryor and Tim Hutchinson, David Matthews, and Ed Matthews. Note: the Deputy Attorney General recommends denial.

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Judd Blair Hirschberg N.D. Illinois (1991) Age: 48	Mail fraud. (Prosecuted for conspiring with friend to defraud insurance company by falsely claiming car was stolen; petitioner claims friend stole car.) Sentenced to three years' probation and ordered to pay restitution of $20,000. (Probation terminated early).	Offense appears to be an aberration in otherwise law-abiding life. Seeks pardon to resume career as commodity trader (lost CFTC registration after conviction). Actively involved in community and charitable endeavors. Note: the Deputy Attorney General recommends denial.
Marty Hughes N.D. Ohio (1987) Age: 80	Aiding and abetting the falsification of union records; aiding and assisting in the preparation and submission of false documents to the IRS; causing the filing of false reporting documents with the Department of Labor. (Engaged in scheme where false expense and wage vouchers were submitted to Communication Workers of America; cash was then directed to political candidates and campaign workers.) Sentenced to five years' probation, ordered to pay a $10,000 fine, and prohibited for 13 years from serving in a union position or with a union-sponsored employee benefit plan.	Remoteness of offense, from which petitioner did not profit personally; since conviction, has lived productive, law-abiding life. Decorated for his service in Army during World War II. Very favorable character references, including President Carter, Senators Glenn and Metzenbaum, Governor Voinovich, Ambassador Celeste; Judges George White, Thomas Lambros, and Henry Woods; and Morton Bahr, president, CWA. Seeks pardon for forgiveness and to have civil rights restored. Note: the Deputy Attorney General recommends denial of clemency in this matter.

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Ruben H. Johnson W.D. Texas (1989) Age: 70	Theft and misapplication of bank funds by a bank officer or director. (While CEO and Chairman of a bank and owner of bank building, required tenants, including bank, to use contracting company which then made payments to petitioner.) Sentenced to eight years' imprisonment (released after five years) and five years' probation, with a condition of 500 hours of community service. Fined $65,000 and ordered to pay restitution of $4,566,298.	Petitioner argues that prosecution was unusual because the practice was common. Very favorable character references, including from Lady Bird Johnson, Congressmen Jake Pickle, Gary Mauro, Walter Cronkite, Dr. Ruth Bain, and Liz Carpenter. Accepts responsibility and expresses remorse. Note: the Deputy Attorney General recommends against clemency.
Larry Killough E.D. Arkansas (1985) Age: 65	Distributing controlled substance for non-medical purpose. (As physician, wrote prescriptions for demerol for non-medical purposes.) Sentenced to 20 months' imprisonment and fined $40,000.	Remoteness of offense, which appears to be isolated event in otherwise law-abiding life; active in church and community activities. As Governor, you gave petitioner conditional pardon. Accepts responsibility and expresses sincere remorse. DEA has reinstated petitioner's license to prescribe controlled substances. Seeks pardon to be able to hunt with sons.

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Salim Bonnor Lewis S.D.N.Y. (1989) Age: 61	Violating Section 10(b) of the Securities and Exchange Act. (In order to prevent the now-illegal practice of short selling prior to a secondary offering and stabilize price of stock, authorized an individual to purchase large amount of stock and promised to cover any attendant losses.) Sentenced to 3 years' probation and fined $250,150 (paid in full).	Petitioner did not stand to profit personally from offense, which was designed to thwart short-selling of stock. Extensive community and charitable activities, with particular emphasis on schools and at-risk youth, including the Orthogenic School of the University of Chicago, a residential facility for emotionally disturbed children, of which petitioner is an alumnus. Favorable character references, including from Douglas Eakley, Dr. Bruno Bettelheim, Expresses deep regret and seeks pardon to ameliorate stigma of conviction.
Charles W. Morgan W.D. Arkansas (1984) Age: 44	Conspiracy to distribute cocaine. Sentenced to three years' imprisonment.	Remoteness of offense; petitioner fully admits mistake, related to substance abuse problem he has since overcome. Has lived stable, productive live since offense. Judges Jimm Larry Hendren and Franklin Waters (sentencing judge) submitted character affidavits supporting pardon. Involved in community, including volunteering with AA and NA and speaking to church and youth groups.

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Kemba Smith	Conspiracy to distribute cocaine (1995) (sentenced to 24.5 years' imprisonment).	Similar to petitions POTU granted this summer; Sentenced to 24.5 years for participation in abusive boyfriend's drug ring	Many Congressional, other recommendations/inquiries	Pending
Harvey Weinig	Conspiracy to commit money laundering; criminal forfeiture; misprision of felony (1996) (sentenced to 11 years, 3 months in prison)	Assisted law partner in processing wire transfers for partner's client (whom partner claimed was legit. Businessman); partner's client was actually drug dealer; partner rec'd sentence reduction for gathering evidence against petitioner	Rep. By Reid Weingarten, JDP; Harold Ickes	Pending
Nick Wilson	1. Racketeering (2000) (sentenced to 70 months, $1.2M restitution, fined $20K) 2. Tax evasion (1999) (sentenced to 18 months, to run concurrently w/ #1, $42K restitution, $40K fine) Reported June 2000	Pled guilty to orchestrating schemes to enrich self and associates at expense of state and federal children's' programs	Spouse, Susan Wilson, has written to request commutation (b/c of effects of sentence on son Alex)	

Draft
Italics = DOJ has promised report



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McCabe

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1-4-01 June 2000

SUMMARY OF HARVEY WEINIG'S PETITION FOR COMMUTATION

Harvey Weinig -- a father of two boys, a lawyer with a history of public service, a man with no prior criminal record -- naively permitted himself to become involved in legal work in furtherance of a money laundering conspiracy. He pleaded guilty in 1995 and cooperated with the government.

Eleven of Mr. Weinig's co-defendants, including several leaders of the conspiracy, pleaded guilty and were sentenced to prison terms of three years or less. Mr. Weinig -- despite the absence of any prior criminal record, his minor role in the operation, and his cooperation -- received a sentence of 11 years and three months. This gross disparity in sentencing shocks the conscience and violates fundamental principles of fairness and equal treatment under the law.

Mr. Weinig is a good man who made a horrible, life-changing mistake. He forthrightly admitted his wrongdoing, is deeply ashamed of his actions, and has suffered the severe punishment of almost four years in prison. His children -- one of whom has been institutionalized for severe depression -- desperately need him. This petition is his only hope for equal justice.

* * *

In 1993, Harvey Weinig formed a small law firm with a man named Robert Hirsch, unaware that Hirsch and a client named Peter Tohmes had been involved for years in a conspiracy to launder the proceeds of drug sales. Mr. Weinig assisted Hirsch in providing legal services to Tohmes, naively accepting Hirsch's represenations that Tohmes was a legitimate businessman engaged in buying and selling "gray market" goods. Over time, Mr. Weinig became aware of the truth but did not extricate himself from the criminal activity.

After the authorities discovered the money laundering activity, Hirsch cooperated with the government and was sentenced to three years in prison. Other principals in the scheme also received modest sentences. Richard Spence, who pleaded guilty to money laundering, wire fraud, false statements, extortion by kidnapping and mail fraud, received a sentence of three years. Leon and Rachel Weinmann, who as Thomes' primary bankers helped him launder almost $100 million, were sentenced to one year unsupervised probation and are currently residing in Switzerland. Nine other defendants who served as couriers in the scheme were sentenced to terms ranging from probation to a prison term of two years and three months.

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Thomes, the scheme's ringleader, was sentenced to eight years and is currently awaiting a treaty transfer to Israel. But Mr. Weinig, a belated and minor participant in the operation, inexplicably received a sentence of 11 years and three months.

Prior to his foolish participation in Hirsch's wrongdoing, Mr. Weinig had led an exemplary life as a father, husband and member of the community. A five-inch thick notebook accompanying Mr. Weinig's petition contains dozens of letters from his family, friends, neighbors, colleagues and clients describing the positive impact that he has had on their lives. Even Mr. Weinig's prison supervisor, in an unusual act, wrote a letter praising him.

Mr. Weinig deeply regrets his criminal conduct, and is ashamed of the devastating effect it has had on his family. His youngest son has been institutionalized for severe depression. His wife has struggled to keep the family together. Mr. Weinig's release would permit him to begin to repair the damage to his family, and to contribute positively to his community by accepting a job counseling and teaching former inmates that is waiting for him should he be released.

On April 7, 2000, Mr. Weinig filed a petition for commutation of sentence, which is currently under review by the Office of the Pardon Attorney. The President has plenary power and authority to grant Mr. Weinig commutation. Mr. Weinig, who has already served over four years in a medium-security prison, still faces over seven more years in jail. Mr. Weinig respectfully requests that the President commute his sentence to five years, so that he may rejoin his family and contribute positively to his community after one more year of incarceration.

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Cynthia A. Hayes
[redacted]

December 18, 1995

Honorable Kevin T. Duffy
United States District Judge
United States Court House
Foley Square
New York, NY 10007

Dear Judge Duffy,

I am writing in connection with a prospective sentencing proceeding for Harvey Weinig, based on his guilty plea to a charge of conspiracy to violate the money laundering laws.

I am an independent management consultant, practicing in the media industry for six years. I have lived and worked in New York since graduating from Harvard Business School in 1983, and have known Harvey for the past eight years. I came to know Harvey through my husband, Charles Cummings, who befriended him while they were at law school.

During the time that I have known Harvey, our families have been close, sharing meals, vacations, child care responsibilities and the trials of life. Throughout the eight years, he has been a supportive and loyal friend, a dedicated father and a devoted husband.

Harvey is a magnet, attracting friends with his wit and charm, entertaining them with his literary and legal intellect and ensuring that those around him were always comfortable. But, beneath the surface charm is a warm and sensitive friend, alert to the needs of those he cares for, and always ready to assist. Whenever I have a problem, something that needs to be discussed, Harvey is the friend I call on. As a friend he has made himself available on short notice as a sounding board for business issues. He has provided endless hours of counseling on child rearing, relationships, and dealing with complex family problems. He has offered guidance and the voice of experience and reason on difficult household decisions, and he has provided me with endless insight into my motivations as well as those of our mutual friends. Harvey loves to debate the meaning of life, and in so doing, challenges us all with understanding ourselves, the choices we make and our definitions of fulfillment.

Harvey has also provided free legal assistance on a number or occasions, but each time his role was more than that of an objective lawyer. Harvey negotiated the purchase of our first home, steering us through the overwhelming process of making a

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commitment that bore such emotional and financial risks. Acting as friend and lawyer, Harvey helped me through the difficult process of severing relationships with a troublesome business partner, and helped me to see the wisdom of exchanging money for peace of mind in what could have become a nasty situation. Harvey has also provided free legal services for members of my family, including negotiating a difficult divorce for my cousin from her non-cooperative husband.

Harvey's love for his children has always been a dominant factor in his life, shaping his ideas of how he wants to spend his time, his money and his life. He structured his business so that he could come home early in the evenings, spending more time with his kids than the average professional. He's been very involved in their education, spending hours reading to the boys, helping with homework, participating in school events and generally conveying the idea that education was a wonderful and valuable thing. He has done his best to foster their interests in sports (getting up at 4 a.m. to take Sam to hockey lessons) music, Hebrew school and other activities. Harvey has also taught the boys the importance of community and giving back to the world with the same generosity with which they have been blessed, helping Jake and Sam grow into the well rounded kids that they are. Most importantly, he has created a sense of an extended family that pervades the day to day life of the boys. They embrace this family with warmth and caring that emulates Harvey's example.

Despite his strengths, no one would ever refer to Harvey as a saint -- that title has always been reserved for Alice, who could soothe Harvey's ruffled feathers, pamper his tempers and restore a sense of calm when Harvey lost perspective. In return, Harvey has been devoted to her, recognizing the critical and complimentary role that she plays in his life. He worships her as the mother of his children. He compensates for her rough edges and coolness with his warmth and charm. And he shares his life and love with her as a true spouse, a partner in life.

Throughout this past, nightmarish year, it has been difficult to reconcile the facts with the Harvey we all know and love. But as I think about the future, I find it hard to imagine how his family will deal with his absence from their daily lives. Harvey is the one who creates laughter and light, who cherishes family, who builds happiness and provides a warm and loving center to his immediate family and the extended one we share.

Thank you for your time and consideration in this weighty matter.

Sincerely,

Cynthia A. Hayes

copies to : Ms. Jineen M. Forbes
United States Probation Officer
United States Probation Office
Southern District of New York
500 Pearl Street, 7th Floor North
New York, NY 10007

Mr. John R. Wing
Partner
Weil, Gotshal & Manges
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