May 22, 2001

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United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Court House
Room 24.329
111 South 10th Street
St. Louis, Missouri 63102
U.S. CERTIFIED MAIL NO. 7000-0520-0021-3716-6787 - RETURN RECEIPT REQUESTED

RE: LAMBROS vs. FAULKNER, et al, Case No. 01-2037
District of Minnesota, Case No. CIV-98-1621-DSD/JMM

Dear Clerk:

Attached for filing in the above-entitled action is one original and three (3) copies of the following:

1. BRIEF OF PLAINTIFF - APPELLANT, dated **May 21, 2001;**
2. EXHIBITS OF PLAINTIFF - APPELLANT, dated **May 21, 2001.**

I spoke with my mother, Pat Lambros, on Sunday May 20, 2001, and she assured me that she would be speaking with the Clerk for the District Court in St. Paul, Minnesota so the **$105.00 Docketing Fee** would be paid by May 30, 2001 in this action. Thus, please hold this action if you have not been notified by the Clerk in St. Paul until June 1, 2001. **The intent is to pay the filing fee of $105.00 in full.**

Thanking you in advance for your continued assistance.

Sincerely,

John Gregory Lambros

CERTIFICATE OF SERVICE

I hereby state under the penalty of perjury that a true and correct copy of the above-entitled BRIEF OF PLAINTIFF-APPELLANT and EXHIBITS OF PLAINTIFF -APPELLANT, both dated May 21, 2001 was served on the following this **22nd day of May, 2001,** via U.S. Mail within an envelope, stamped, through the U.S.P. Leavenworth Mail Room, to:

1. Attorney Donna Rae Johnson and Attorney Deborah Ellis, 700 St. Paul Bldg., 6 West Fifth Street, St. Paul, Minnesota 55102.

2. Internet release to the BOYCOTT BRAZIL web site and Human Rights Groups Globally.

John Gregory Lambros, Pro Se

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS,

Plaintiff - Appellant

vs.

CHARLES W. FAULKNER, sued as Estate/Will Business Insurance of Deceased Attorney Charles W. Faulkner; SHEILA REGAN FAULKNER; FAULKNER & FAULKNER, Attorneys-at-Law; JOHN AND JANE DOE, persons employed by Attorney C.W. Faulkner, Sheila Regan Faulkner and Faulkner in the representation of John Gregory Lambros,

Defendants - Appellees

CASE NUMBER

01-2037

On Appeal from the United States District Court

for the District of Minnesota

Case No. CIV-98-1621-DSD/JMM

BRIEF OF PLAINTIFF - APPELLANT

JOHN GREGORY LAMBROS
Appellant Pro-Se
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INTERNET WEB DIRECTORY OF ORIGINAL FILE IN THIS ACTION:

Plaintiff - Appellant LAMBROS has established an Internet World Wide Web directory and **SEARCH ENGINE** within some of most of the original file in this action for the Court's convenience. Therefore this Court may go directly to the BOYCOTT BRAZIL web site and use the **TEXT SEARCH** with "Boolean" search feature on the first page to research most of the original filing in this action. Appellant will attempt to have his volunteers upload all filings as soon as possible. Turn your internet browser to: .....**www.brazilboycott.org**

STATEMENT OF ISSUES

I. DID THE DISTRICT COURT ERR IN DISMISSING THE COMPLAINT AGAINST GOVERNMENTAL OFFICIALS ON GROUNDS OF OFFICIAL IMMUNITY WITHOUT DETERMINATION THAT THE COMPLAINED-OF ACTS WERE OFFICIAL ACTS?

TOWER vs. GLOVER, 467 U.S. 914, 81 L.Ed.2d 758 (1984)
SCHEUER vs. RHODES, 416 U.S. 232, 40 L.Ed.2d 90 (1974)
DZIUBAK vs. MOTT, 503 N.W.2d 771 (Minn. 1993)

II. WHETHER THE DISTRICT COURT ERRED IN RULING THAT APPELLANT LAMBROS WAS NOT PREJUDICED BY APPELLEE'S DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR APPELLANT LAMBROS?

GLOVER vs. U.S., 121 S.Ct. 696, 148 L.Ed.2d 604 (2001)
U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995)

III. WHETHER THE DISTRICT COURT ERRED WHEN IT GAVE RETROACTIVE EFFECT TO A MINNESOTA SUPREME COURT JUDICIAL DECISION, WHERE THERE WAS NOTHING IN THE DECISION INDICATING THAT IT WAS TO HAVE RETROACTIVE EFFECT, THAT GAVE IMMUNITY TO STATE PUBLIC DEFENDERS, BUT FEDERAL PUBLIC DEFENDERS, WHEN THE UNITED STATES SUPREME COURT HAS DENIED FEDERAL COMMON LAW IMMUNITY TO COURT-APPOINTED ATTORNEYS SUED FOR MALPRACTICE BY HIS OWN CLIENT?

FERRI vs. ACKERMAN, 444 U.S. 193, 62 L.Ed.2d 355 (1979)
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IV. WHETHER THE DISTRICT COURT ERRED IN RULING THAT THE ISSUE OF CAUSATION, UNDER MINNESOTA STATE LAW, IS A MATTER OF FACT TO BE DECIDED BY A JUDGE?

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V. **WHETHER THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO THE RACKETEERING (RICO) CLAIMS UNDER TITLE 18 U.S.C. § 1962(c) and (d) WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE COMMISSION OF PREDICATE ACTS?**

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U.S. vs. EISEN, 974 F.2d 246 (2nd Cir. 1992)
BROWN vs LaSALLE NORTHWEST NATIONAL BANK, 820 F.Supp. 1078 (N.D.Ill. 1993)

STATEMENT OF THE CASE

The Appellant-Plaintiff herein, JOHN GREGORY LAMBROS, sued Defendants Charles W. Faulkner ("C.W. Faulkner"), C.W. Faulkner's law firm of FAULKNER & FAULKNER, Sheila Faulkner, a partner at Faulkner & Faulkner, and Defendants John and Jane Doe's as persons employed by C.W. Faulkner that assisted in the federal criminal defense of Plaintiff LAMBROS in federal criminal case, U.S. vs. LAMBROS, CR-4-89-82(05), which stemmed from the United States Grand Jury for the District of Minnesota on May 17, 1989.

Defendant C.W. Faulkner was appointed to be Plaintiff LAMBROS' attorney pursuant to Title 18 U.S.C. §3006A, which provides for selection of defense counsel for indigent defendants from a panal of private attorneys that are paid an hourly rate. Section 3006A provides that the appointed attorney shall continue to represent the criminal defendant throughout the proceedings, unless the defendant becomes financially able to hire a private attorney.

Defendant FAULKNER et al. during the legal representation of Plaintiff LAMBROS failed to exercise due diligence, were negligent, gave Plaintiff improper advice, failed to interview and/or subpoena witnesses, failed to consult with and/or communicate regularly with Plaintiff and failed to understand or know or apply the law. Proof as to Defendant C.W. Faulkner, et al. failure to know and apply the law was obvious to this Court, Eighth Circuit, when it ruled, "[D]efendant [Lambros] who was convicted of a conspiracy to distribute cocaine was not subject to statute's MANDATORY LIFE SENTENCE, where statute did not take effect until WELL AFTER conspiracy end date charged in indictment." See, U.S. vs. LAMBROS, 65 F.3d 698, Head Note 1 (8th Cir. 1995). Plaintiff LAMBROS was resentenced to the maximum sentence possible under BRAZILIAN LAW, due to his extradition from Brazil to the United States, thirty (30) years, as per Article 75 of the Brazilian Criminal Code, which limits the maximum prison sentence to thirty (30) years and Brazil's Constitution, which, prohibits, absolutely, the imposition of any penalty of a

lifelong character (CC, Article 5, Clause XLVII(b)). In fact, it was Defendant C.W. Faulkner, et al. lack of knowledge and research as to the definitions and clarifications of Brazilian Law within the areas of THE DOCTRINE OF SPECIALTY, STANDING TO RAISE THE DOCTRINE OF SPECIALTY, and THE DUAL CRIMINALITY DOCTRINE that allowed Defendant C.W. Faulkner, et al., to offer Plaintiff an illegal plea bargain and be sentenced to over thirty (30) years, as per Brazilian Law.

Plaintiff LAMBROS is suing Defendant C.W. Faulkner, et al. on **FEDERAL QUESTIONS** arising under statutes of U.S. Law, Brazilian Constitutional Law, U.S. - BRAZIL EXTRADITION TREATY, State of Minnesota Constitution, Common Law, and the Minnesota Attorney's Code of Professional Responsibility. Plaintiff Stated within his January 17, 1999, **AMENDED COMPLAINT**, "[T]his is a civil case brought to the jurisdiction of this Court to Title 28 U.S.C.A. §§ 1331, 1332, 1441(b), 1655 (Lien), 2201, 2202, and Title 18 USCA §§ 1961, 1962, 1963, 1964, and 1965 (**RICO**)."

On August 04, 1999, United States Magistrate Judge John M. Mason, stated within his REPORT AND RECOMMENDATION on page 17 under RECOMMENDATION, "[F]or the reasons set forth above, it is recommended that Defendants' Motion to Dismiss or for Summary Judgment [Docket No. 47] be DENIED as presented." Reasons set forth by Judge Mason included: (a) Defendants have not shown that Plaintiff's claims against C.W. Faulkner's estate are time barred (Page 4); (b) Plaintiff has not failed to state a claim against the defendants other than C.W. Faulkner. (Page 6); (c) Consideration of these materials does not alter our conclusion that Defendants have not established that Summary Judgment should be granted at this time. (Page 10); (d) Plaintiff's legal malpractice claims are not barred by collateral estoppel. (Page 11); (e) Defendants have not established that no genuine issue of material fact exists as to Plaintiff's legal malpractice claims. (Page 14); and (f) DEFENDANTS HAVE NOT ESTABLISHED THAT PLAINTIFF'S AMENDED COMPLAINT FAILS TO STATE A CLAIM UNDER RICO. (Page 15).

11.

On November 15, 1999, United States District Court Judge David S. Doty ORDERED the August 04, 1999, REPORT AND RECOMMENDATION by U.S. Magistrate Judge Mason ADOPTED after de novo review of the file and record by dismissal of Defendant C.W. Faulkner's et al. motion to dismiss or for summary judgment.

On February 14, 2001, United States District Court Judge David S. Doty ORDERED the REPORT AND RECOMMENDATION of U.S. Magistrate Judge Mason's October 31, 2000 report adopted as to court-appointed federal public defenders, C.W. Faulkner, et al., IMMUNITY FROM STATE TORT CLAIMS, as per the August 6, 1993 decision in DZIUBAK vs. MOTT, 503 N.W.2d 771, by the Minnesota Supreme Court. Judge Doty stated, "[T]herefore, as the magistrate judge correctly held, the Court's task in this case is to apply the Minnesota Supreme Court's holding in DZIUBAK vs. MOTT, 503 N.W.2d 771 (Minn. August 6, 1993), to the plaintiff's case. In DZUIBAK, the Minnesota Supreme Court determined that FULL-TIME state public defenders are immune from suit for malpractice. Plaintiff argues that DZIUBAK should not be extended to offer immunity to federal court-appointed defense attorneys. The court has reviewed both the FERRI and DZIUBAK decisions and other relevant case law and agrees with the magistrate judge that strong public policy rationale relied upon by the DZIUBAK court in granting immunity to full-time state public defenders is equally applicable to court-appointed defenders in a federal criminal case. Therefore, the court affirms the magistrate judge's conclusion that the state court would likely extent its grant of immunity to defendants in this action. Dismissal of plaintiff's malpractice claim on that basis is appropriate. With respect to the magistrate's judge's conclusions concerning the merits of plaintiff's malpractice and RICO claims, the court agrees that plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way prejudiced plaintiff's defense or that defendants coerced witnesses to give false testimony in plaintiff's criminal case. Therefore, dismissal of plaintiff's claims on the merits is appropriate and defendants' motion for summary judgment is granted. See, February 14, 2001,

ORDER, by U.S. Judge Doty, pages 3 and 4.

On February 23, 2001, Plaintiff LAMBROS filed a "Motion to Alter or Amend Judgment and/or Have Judgment Vacated under Federal Rules of Civil Procedure Rule 59(e)," as to U.S. Judge Doty's ORDER dated February 14, 2001.

Plaintiff LAMBROS challenged Judge Doty's February 14, 2001, ORDER as to the following issues: (1) "MINNESOTA SUPREME COURT DECISIONS CANNOT BE APPLIED RETROACTIVELY WITHOUT DIRECTIVE REQUIRING RETROACTIVE APPLICATION."; (2) "EX POST FACTO CLAUSE PREVENTS THE MINNESOTA SUPREME COURT RULING IN DZIUBAK vs. MOTT, TO NEGATIVELY AFFECT PLAINTIFF LAMBROS AND OFFERING DEFENDANTS A GRANT OF IMMUNITY IN THIS ACTION."; (3) "PLAINTIFF LAMBROS WAS PREJUDICED UNDER THE PREJUDICE PRONG OF STRICKLAND vs. WASHINGTON, 466 U.S. 668 (1984), AS TO DEFENDANT'S DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR PLAINTIFF LAMBROS."; and (4) "UNDER MINNESOTA LAW THE ISSUE OF CAUSATION IS A MATTER OF FACT TO BE DECIDED BY A JURY, NOT A JUDGE. See, ST. PAUL, FIRE & MARINE INSURANCE COMPANY vs. HONEYWELL, 2000 WL 685007 (Minn. App. 2000)." See, **EXHIBIT A.**

On March 30, 2001, Judge Doty ORDERED, pursuant to Plaintiff LAMBROS' February 23, 2001 motion to alter or amend judgment pursuant to Federal Rules of Civil Procedure 59(e) stated, "[P]laintiff argues that the court made an unwarranted extension of the ruling in DZIUBAK which is inconsistent with the United States Supreme Court's ruling in FERRI vs. ACKERMAN, 444 U.S. 193 (1979). Plaintiff further contends that the court's ruling denies him the right to a remedy for the alleged malpractice of his former criminal attorney, contrary to the Minnesota Constitution and that it would be manifestly unjust and improper to retroactively apply a new interpretation of law to his case. . . . The Court concluded that, based on the strong public policy rationale asserted in DZIUBAK, the Minnesota Supreme Court would likely extend its grant of immunity to court-appointed defense counsel in federal criminal cases. While the court's ruling was undeniably a matter of FIRST IMPRESSION, plaintiff offers no reason for the court to conclude that its decision is manifestly erroneous. . . . Therefore,

IT IS HEREBY ORDERED that plaintiff's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) (Doc. No. 115) is DENIED.

AS A MATTER OF LAW:

This Court, Eighth Circuit Court of Appeals, ruled on September 8, 1995 in U.S. vs. LANBROS, 65 F.3d 698, "Defendant [LANBROS, Plaintiff/Appellant] who was convicted of conspiracy to distribute cocaine was not subject to STATUTE'S mandatory life sentence, where STATUTE did not take effect until well after conspiracy end date charged in indictment."

Therefore, as a matter of law, this Court ruled that Appellant's Constitutional rights guaranteed by the Sixth Amendment as to his right to effective assistance of counsel in criminal prosecutions where VIOLATED. This Court's order to vacate Appellant's sentence of a mandatory life without parole satisfied the U.S. Supreme Courts established two-prong test in STRICKLAND vs. WASHINGTON, 466 U.S. 668 (1984), to evaluate ineffective assistance claims: (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding. Defendants/Appellees errors where so serious that Appellee C.W. Faulkner was not functioning as counsel during PLEA NEGOTIATIONS and SENTENCING of Appellant in grossly overestimating Appellant's sentence exposure that was thirty (30) years as per Brazilian Law. Appellant was resentenced to thirty (30) years as per Brazilian Law. This Court has ruled that persons are PREJUDICED by counsel's unfamiliarity with Sentencing Guidelines and mistaken impression about the length of sentence his client can receive if outside his maximum possible sentence, and # persons substantial rights are affected if his prison sentence was longer than it should have been. U.S. vs. GRANADOS, 168 F.3d 343 (8th Cir. 1999). See also, U.S. vs. GAVIRIA, 116 F.3d 1498 (D.C. Cir. 1997) (remand was required of claim that counsel was ineffective for incorrectly informing defendant as to length of sentence he would face if he accepted PLEA

AGREEMENT that stated he would be subject to a sentence of 36 years to life, when, in fact, he actually would have faced sentence of 15 to 22 years; evidentiary hearing was required on issues of whether defendant would have taken government's PLEA OFFER had he known his TRUE EXPOSURE under sentencing guidelines. Id. at 1498, Head Note 5); U.S. vs. WATLEY, 987 F.2d 841 (D.C. Cir. 1993) (Defendant's guilty plea was rendered involuntary by incorrect information received by defendant BEFORE and at guilty plea hearing about possible sentence, and by failure to advise defendant about peculiar interplay of sentence guidelines and statutory prescriptions, . . .); U.S. vs. HERNDON, 7 F.3d 55 (5th Cir. 1993)("[T]he question is whether AWARENESS of a mandatory minimum [maximum] would have affected the defendant's decision to PLEAD GUILTY." Id. at 58. Due to the fact defendant was not "AWARE OF OR UNDERSTOOD" the existance of the STATUTORY sentence he could receive, the court vacated his conviction and sentence and remanded his case to the trial court for REPLEADING.); and U.S. vs. GORDON, 156 F.3d 376 (2nd Cir. 1998) (Defense counsel's performance in grossly underestimating defendant's sentencing exposure in LETTER to defendant fell below prevailing professional norms for advising criminal defendant during PLEA NEGOTIATIONS. In violation of his Sixth Amendment Constitutional Rights. Id. at 376, Head Note 5. Reasonable probability existed that, BUT FOR defense counsel's unprofessional error in grossly underestimating that defendant's maximum sentencing exposure was ten years, defendant would have accepted guilty plea offer . . . Id. at 376, Head Note 6.)

Therefore, Appellant-Plaintiff LAMBROS now objects to United States Judge Doty's above ORDERS and rulings by raising the following arguments.

ISSUE: ONE (1)

DID THE DISTRICT COURT ERR IN DISMISSING THE COMPLAINT AGAINST GOVERNMENTAL OFFICIALS ON GROUNDS OF OFFICIAL IMMUNITY WITHOUT DETERNINATION THAT THE COMPLAINED-OF ACTS WERE OFFICIAL ACTS?

For the purpose of summary judgment official immunity is decided on two points: (1) does the defendant have official immunity, and (2) if so, were the defendant's acts official or not official? All governmental officials have official immunity, so the key question is whether the act in dispute was an official act, or one of the many non-official acts, i.e., private acts such as eating, driving, or family affairs, that all officials do every day. In the court below, defendants-appellees were determined to be officials and thus to have official immunity, but no determination was made regarding whether their complained-of acts were official acts, yet plaintiff-appellant's complaint was dismissed. This is error by the District Court. This error of law by the court below argues in favor of remand.

OFFICIAL IMMUNITY

The public interest requires decisions and actions to enforce laws for the protection of the public. SCHEUER v. RHODES, 416 US 232 at 241, 40 L.Ed.2d 90, 94 S.Ct 1683. Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made, do not fully and faithfully perform the duties of their offices. SCHEUER v. RHODES, supra, at US 241-242. Implicit in the idea that officials have some immunity--absolute or qualified--for their acts is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error, and possible injury from such error, than not to decide or act at all. SCHEUER v. RHODES, supra, at US 242. Mr. Justice Jackson expressed this general proposition succinctly, stating "it is not a tort for the government to govern." DALEHITE v. UNITED STATES, 346 US 15 at 57, 97 L.Ed 1427, 73 S.Ct 956 (1953)(dissenting opinion). So, official immunity "is not a badge or emolument of exalted office, but an expression of policy designed

to aid in the effective functioning of government." BARR v. MATTEO, 360 US 564 at 572-573, 3 L.Ed.2d 1434, 79 S.Ct 1335 (1959).

Officials have immunity in civil actions against them as individuals commensurate to their responsibilities. The more responsibility an official has, the more immunity he has because the higher the official, the broader his responsibilities, the more far-reaching are his decisions as they impact more and more people, so, therefore, the more extensive is his exposure to civil actions. Those in more danger have more protection. See SCHEUER v. RHODES, supra, at US 245 passim. Put differently, an official has immunity in civil actions against him as an individual so long as he acts within the outer scope of his official duties. He is here acting as an official, or an officer of the state, so the state is the responsible party. As the scope of his duties increases, necessarily so must his immunity. Scope of office and scope of immunity are closely linked. In the words of the Supreme court: "To be sure, the occasions upon which the acts of a head of an executive department will be protected by [official immunity] are doubtless far broader than in the case of an officer with less sweeping functions. But that is because the higher the post, the broader the range of responsibilities and duties, the wider the scope of discretion it entails." BARR v. MATTEO, supra, US at 573-574.

The Eleventh Amendment to the Constitution of the United States blocks civil actions in federal court by a citizen against a state. By simple and direct extension, a citizen cannot bring a suit in law or equity against a State official in federal court because that would be a de facto suit against the State, here directly represented by its officer, and answering for his actions, since the State, not its sued officer, would pay a damage award. However, since Ex part Young, 209 US 128, 52 L.Ed 714, 28 S.Ct 441 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he has deprived another of a federal right under the color of State law. Ex parte Young teaches that when a State officer acts under a State law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution

and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." id., at US 159-160 (Emphasis supplied).

We may conclude here that the act of knowingly violating the constitutional rights of a citizen strips from an official his office, leaving him to act as an ordinary person, an individual, and we all know individuals have no official immunity.

The above discussion of official immunity has been expounded, as though being taught to graduate students by the Supreme Court, in SCHEUER v. RHODES, supra, and also by the Supreme Court of Minnesota in DZIUBAK v. MOTT, 503 N.W.2d 771 (1993), which more specifically addressed the official immunity of state public defenders.

To end this discussion of official immunity, we may conclude that:

1) officials have immunity to civil actions against them as individuals only in proportion to their authority and responsibilities;

2) for the purpose of allowing them to act swiftly and decisively, in good faith and in the admittedly limited light of current circumstances, without consequent personal liability for honest mistakes;

3) but officials step out of the protective clothing of their offices when they knowingly violate Constitutional rights;

4) and in such cases are not officials, but become ordinary individuals, and consequently have no official immunity.

OFFICIAL IMMUNITY IN THE INSTANT CASE

In that defendants-appellees were public defenders, or operated in supporting roles to the public defender, necessarily they have official immunity for their official acts, DZIUBAK v. MOTT, 503 N.W.2d 771 (Minn. 1993), for surely the public defender holds public office.

However, the public defender is not a high-ranking official. The defender thus has less immunity than a prosecutor or a judge. Also, like all other officials, the public defender has immunity for his official acts only. If the local public defender assaults me in the local bar, mistaking me for his wife's lover, he has no immunity because he is not acting as an official, so he can be prosecuted for

assault and I can sue him in a tort action to recover my medical expenses, and to compensate me for my pain, suffering, and time lost from work. Also, some of his acts, carried out while he is at work, using his authority as an official, are not official acts and may leave him open to a civil action for damages as an individual.

For example, the DZIUBAK court, supra at 774, noted that:

> In TOWER v. GLOVER, the Supreme Court held that there is no immunity when a public defender deliberately conspires with a prosecutor to intentionally deprive defendants of their constitutional right, and therefore, public defenders are subject to suit under 42 U.S.C. § 1983. TOWER v. GLOVER, 467 US 914, 104 S.Ct 2820, 81 L.Ed.2d 758 (1984).

So, not surprisingly, the Supreme Court of Minnesota differentiates between valid official acts of a public defender, on the one hand, and knowingly wrongful acts of an individual who holds the office of public defender, on the other hand.

The question in the case at bar is not, "do defendants have official immunity?" for surely they do. The question is whether the acts of defendants-appellees complained of in the District Court were official acts. Were these acts negligent, or were they intentional? Were they merely damaging to appellant, or did they substantially violate his constitutional rights and cause consequent real damage? If any of defendants'-appellees' acts complained of were substantially and intentionally violative of plaintiff's-appellant's constitutional rights, then regarding those acts, defendants-appellees cannot be availed official immunity.

The court below granted summary judgment to defendants-appellees dismissing plaintiff's-appellant's complaint in its ORDER of 13 February 2001 after determining that defendants-appellees had official immunity, but without analysis of whether the acts of defendants-appellees were official acts. This is a fatal error of law. The District Court made no mention of the nature of defendants'-appellees' acts; not one.

> Summary judgment cannot be granted on an official immunity claim without a determination that the acts complained of were not intentional violations of substantive constitutional rights.

To determine that an official has official immunity is tautological; it tells us nothing. It's identical to asserting that an Army officer is in the Army. The District Court asserted that the defendants-appellees acting as officials in the ordinary course of their business, were officials and ipso facto could not be sued for damages in a civil action, and, by a strong, controlling implication, that the nature of their complained-of acts are of no consequence. This is an alarming stance for a Federal court to take, and it is a substantive error of law. Further, the court below made no determination of the degree of official immunity defendants-appellees had, and so from its ORDER no conclusion can be made as to whether the complained-of acts come within the comparatively little official immunity a public defender has. This, too, is a substantial error of law.

The Nature Of What Defendant-Appellees Did

Defendant-appellees were private attorneys, "paid pursuant to an hourly billing rate" under "contract" to the Federal Public Defender office in Minneapolis (see attached letter from Dan Scott) defending plaintiff-appellant in a drug case for which the maximum sentence everyone knew was thirty years (see attached letter from U.S. Marshal Pavlak, dated March 1990), and for which plaintiff-appellant now has thirty years.

At sentencing, January 27, 1994, plaintiff-appellant argued vociferously, and at great length, and on several grounds, that he should not be sentenced to Life w/o parole. His defense attorney, defendant-appellees, while ostensibly arguing against a Life sentence, on only two pages of transcript, referred to plaintiff-appellant thusly:

(a) it has been clear to me all along that Mr. Lambros has not been competent or rational....

(b) I frankly believe [Mr. Lambros] is not in his right mind....

(c) [Mr. Lambros] is a very troubling person to deal with and represent.

(d) [Mr. Lambros] very often does not act in his own best interests.

(e) I think his behavior has gotten increasingly more bizarre.

(f) Mr. Lambros has been his own worst enemy. Over the years, he apparently has deteriorated.

These comments, ostensibly in mitigation, were in the framework of there having been no insanity defense at trial, so obviously, very obviously, the sentencing judge had no basis in law to reduce the Life w/o parole sentence the Government was demanding on grounds of insanity. In other words, defendant-appellees were attacking their client, carrying out a de facto prosecution, not a defense, in concert with the prosecutor. Recall DZIUBAK, supra, at 774:

> In TOWER v. GLOVER, the Supreme Court held that there is no immunity when a public defender deliberately conspires with a prosecutor to intentionally deprive defendants of their constitutional rights.

This is not to say the defense attorney, defendant-appellees, and the prosecutor had beforehand secretly agreed to collude against plaintiff-appellant, but it is to say this is what happened, and a person of just marginal intelligence can see it clearly in the January 27, 1994 sentencing transcript. The sentencing judge saw it, and on pages 43 and 44 noted at length and in detail that plaintiff-appellant was not crazy. This Court, in U.S. v. LAMBROS, 65 F.3d 698 at 701, led off a long comment with, "Far from being incompetent, Lambros...."

In summary, defendant-appellees knowingly, with intent and cunning, deprived plaintiff-appellant of his procedural and substantive due process rights to be represented by defense counsel at sentencing, and this was fairly representive of the state of affairs throughout the entire legal process, from the day defendant-appellees hired on as contract public defenders. The result was an illegal Life w/o parole sentence since reduced to thirty years.

Exactly How The District Court Erred In Its ORDER of Dismissal

In Judge Doty's ORDER of 13 February 2001, on page 3, the Court notes that:

> The Court has reviewed both the Ferri and Dziubak decisions and other relevant case law and agrees with the magistrate judge that the strong public policy rational relied upon by the Dziubak court in granting immunity to full-time state public defenders is equally applicable to court-appointed defenders in a federal criminal case.

Thus noting that a contract Federal Public Defender is a Federal official, with all the protections pertaining thereto, including official immunity, the District Court stopped. No investigation or analysis ensued to determine if defendant-appellees' complained-of acts were within the outer scope of their official duties, or, totally different, were acts in knowing violation of plaintiff-appellant's constitutional rights, thus stripping defendant-appellees of their office, leaving them to act as individuals, who, of course, have no official anything, including immunity.

So the District Court made a preliminary finding that a Federal contract public defender is a Federal official, and had official immunity, and therefore could not be sued as an individual. That is a very alarming conclusion. It claims that all acts of officials are official, and thus need no constitutional analysis. In other words, Federal officials may make honest mistakes, but they cannot be evil, so they have absolute, no-need-to-analyze, immunity from civil actions against them as individuals. This is extremely alarming, and it is just dead wrong. The District Court is in frank, total, and very serious error, for just failing to make an analysis of defendant-appellees' complained-of acts. Since those acts were in conspiracy to deprive a citizen of his constitutional rights, this error of the District Court resulted in a gross miscarriage of justice. This fairly cries out for reversal and remand.

ISSUE: TWO (2)

WHETHER THE DISTRICT COURT ERRED IN RULING THAT APPELLANT LAMBROS WAS NOT PREJUDICED BY APPELLEES' DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR APPELLANT LAMBROS.

Appellant LAMBROS asserts that Appellees' performance as an attorney was deficient during PLEA BARGAINING NEGOTIATIONS and SENTENCING that resulted in a sentence longer than Appellant deserved due to the applicable law. Appellant LAMBROS was "PREJUDICED."

On September 8, 1995, this Court, Eighth Circuit Court of Appeals, ORDERED Appellant's sentence vacated and remanded for resentencing, stating, "Defendant [LAMBROS] who was convicted of a conspiracy to distribute cocaine was not subject to statute's mandatory life sentence, where statute did not take effect until well after conspiracy end date charged in indictment." U.S. vs. LAMBROS, 65 F.3d 698, Head Note 1 (8th Cir. 1995).

On January 9, 2001, the United States Supreme Court ruled unanimously that an attorney's deficient performance at sentencing that results in a sentence longer than the defendant deserved due to an error in the court's sentencing calculations is "PREJUDICIAL" without regard to the length of the INCREASED SENTENCE. GLOVER vs. U.S., 121 S.Ct. 696, 148 L.Ed.2d 604 (2001)(". . .[h]eld to establish prejudice for purposes of SIXTH AMENDMENT ineffective-counsel claim.")

United States Judge Doty stated that Appellant LAMBROS was NOT PREJUDICED IN ANY WAY BY APPELLEES'. See, ORDER, Filed February 14, 2001, pages 3 & 4:

> "[W]ith respect to the magistrate's judge's conclusions concerning the merits of plaintiff's malpractice and RICO claims, the court agrees that plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way prejudiced plaintiff's defense or that defendants coerced witnesses to give false testimony in plaintiff's criminal case. Therefore, dismissal of plaintiff's claims on the merits is appropriate and defendants' motion for summary judgment is granted.

Appellant LAMBROS was resentence by ORDER of this Court and received a thirty (30) year sentence, the most he could receive under Brazilian Law due to his extradition from Brazil to the United States. Brazilians can not receive more than a thirty (30) year maximum sentence for criminal conduct as per statute.

Therefore, Appellant LAMBROS was "PREJUDICED" by the fact that he received and was told by Appellees' via United States mail, over the telephone and in person he could only receive a MANDATORY LIFE SENTENCE WITHOUT PAROLE during PLEA BARGAINING NEGOTIATIONS and throughout his trial.

Appellant LAMBROS therefore requests that this Court reverse the District Courts' error in ruling that ". . .[t]he court agrees that plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way prejudiced plaintiff's defense . . .".

ISSUE: THREE (3)

WHETHER THE DISTRICT COURT ERRED WHEN IT GAVE RETROACTIVE EFFECT TO A MINNESOTA SUPREME COURT JUDICIAL DECISION, WHERE THERE WAS NOTHING IN THE DECISION INDICATING THAT IT WAS TO HAVE RETROACTIVE EFFECT, THAT GAVE IMMUNITY TO STATE PUBLIC DEFENDERS, NOT FEDERAL PUBLIC DEFENDERS, WHEN THE UNITED STATES SUPREME COURT HAS DENIED FEDERAL COMMON LAW IMMUNITY TO COURT-APPOINTED ATTORNEYS SUED FOR MALPRACTICE BY HIS OWN CLIENT.

On February 14, 2001, United States District Court Judge D.S. Doty gave Defendants-Appellees immunity from state tort claims, as per the August 6, 1993 decision in DZIUBAK vs. MOTT, 503 N.W.2d 771, by the Minnesota Supreme Court, as to constitutional rights violations and injuries that produced substantial inequitable results by depriving this Plaintiff-Appellant of any remedy whatsoever on the basis of a retroactive legal doctrine that was unforeseeable and contrary to the underlying purpose of a legal malpractice action of aiding injured persons by affording them remedies under state law.

Appellant's jury trial ended in January 1993, seven months before the DZIUBAK court held that full-time state public defenders are immune from suit for malpractice. The DZIUBAK case had limited applicability and offered immunity only to full-time state public defenders, paid by the state. DZIUBAK is not applicable to the instant case because the Appellees are not full-time and/or state public defenders in any type of capacity, but rather FEDERAL court-appointed part-time private attorneys who are paid an hourly rate from the FEDERAL government.

Magistrate Judge Mason acknowledged in his RECOMMENDATION that the DZIUBAK case differed from the case at issue and stated, "In DZIUBAK, the Minnesota Supreme Court held that full-time state public defenders are immune from suit for legal malpractice. C.W. Faulkner [the Defendant/Appellee], on the other hand

was a private attorney selected to represent Plaintiff [Appellant] in a single criminal case. The Minnesota decision does not directly address the issue of immunity for private attorneys who serve as part-time public defenders presented by this case." (RECOMMENDATION, Page 10-11). Nonetheless, Magistrate Judge Mason and Judge Doty extended DZIUBAK, predicting that the Minnesota Supreme Court would find enough similarities between part-time FEDERAL public defenders and full-time STATE public defenders to extend the reasoning in the DZIUBAK decision to grant FEDERAL court-appointed attorneys immunity from malpractice lawsuits.

During all times of Defendant/Appellee's actions, existing case law provided stronger support for the conclusion that FEDERAL court-appointed attorneys parallel private retained attorneys, and therefore, DZIUBAK should not be applied RETROACTIVE to offer immunity of FEDERAL court-appointed attorneys. In FERRI vs. ACKERMAN, 444 U.S. 193 (1979) the United States Supreme Court DENIED federal immunity to a court-appointed attorney, stating,

> "The point of immunity for such ...officials is to forestall an atmosphere of intimidation that would conflict with their resolve to perform their designated functions in a principled fashion. In contrast, the primary office performed by appointed counsel parallels the office of privately retained counsel... His principal responsibility is to serve the undivided interests of his client ... The fear that an unsuccessful defense of a criminal charge will lead to a MALPRACTICE CLAIM does not conflict with performance of that function. If anything, it provides the same incentive for appointed and retained counsel to perform that function competently. THE PRIMARY RATIONAL FOR GRANTING IMMUNITY TO JUDGES, PROSECUTORS, AND OTHER PUBLIC OFFICERS DOES NOT APPLY TO DEFENSE COUNSEL FOR MALPRACTICE BY HIS OWN CLIENT." FERRI, at 204. (emphasis added).

This Court, the Eighth Circuit, in WHITE vs. BLOOM, 621 F.2d 276 (8th Cir. 1980) followed the United States Supreme Court decision in FERRI (involving a state malpractice action) and applied the reasoning in FERRI in denying immunity to a court-appointed attorney. The WHITE court agreed that the "important reason supporting COMMON LAW IMMUNITY for prosecutors and judges therefore does not support a like immunity for court-appointed attorneys." WHITE, at 280. This Court interpreted the application of the FERRI case to apply broadly, stating, "its broad

holding is that the federal common law immunity available to prosecutors and judges ... is not available to COURT-APPOINTED ATTORNEYS." WHITE, 621 F.2d at 280. (Citation omitted, emphasis added). Although both the FERRI and WHITE cases address the issue of federal immunity rather than state common law immunity, the United States Supreme Court's as well as the Eighth Circuit Court's discussion comparing the similarities between court-appointed defense attorneys and private attorneys is very relevant and lend stronger support to decline RETROACTIVITY to the DZIUBAK ruling to PRIVATE ATTORNEYS WHO SERVE AS PART-TIME FEDERAL PUBLIC DEFENDERS.

Defendants/Appellee's at the time of representing Appellant could not reasonably and or fairly say that they enjoyed IMMUNITY, as no law existed to establish the immunity defense until August 6, 1993, as per the decision in DZIUBAK, which gave no clear guidance to federal district courts indicating that it was to have RETROACTIVE EFFECT or the Minnesota Supreme Court's decision applied to PRIVATE ATTORNEYS WHO SERVED AS PART-TIME FEDERAL PUBLIC DEFENDERS. The U.S. Supreme Court has held, "We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as THEIR CONDUCT DOES NOT VIOLATE CLEARLY ESTABLISHED STATUTORY OR CONSTITUTIONAL RIGHTS OF WHICH A REASONABLE PERSON WOULD HAVE KNOWN." See, HARLOW vs. FITZGERALD, 73 L.Ed. 2d 396, 410 (1982)("If the law was clearly established, the IMMUNITY DEFENSE ordinarily should FAIL, since a reasonably competent public official should know the law governing his conduct." HARLOW, at 411).

The Fifth Circuit stated in COX vs. SCHWEIKER, 684 F.2d 310, 311, Head Note 9, (5th Cir. 1982), "In a case involving a judge-made COMMON-LAW PRINCIPLE, NO RIGHT VESTS OR EVEN ARISE UNTIL THE JUDGE HAS DECLARED WHAT THE LAW IS whereas in case of a statute the entitlement vests once a person fulfills statutory requirements and it vests despite the fact that an adjudicator has misapplied the statute, . . ."

The majority of the Illinois Supreme Court ruled on December 1, 2000, that Illinois new Public and Appellate Defender Immunity Act CANNOT be applied retroactively to block a malpractice claim against a public defender and his supervisors. En route to this conclusion, the majority made clear that, apart from the statute, public defenders do not enjoy sovereign immunity from malpractice actions. The court stated, "[T]he plaintiff's claim 'VESTED' before the new law took effect and became a 'constitutionally protected property interest' that could not be abrogated 'without offending plaintiff's DUE PROCESS RIGHTS." In a concurring opinion, the same result was reached by applying the retroactivity analysis set forth in LANDGRAF vs. USI FILM PRODUCTS, 511 U.S. 24 (1994). See, JOHNSON vs. HALLORAN, Ill., No. 89594. Quoting, Criminal Law Reporter, Vol. 68, No. 11, Page 240, 12/13/00. See, EXHIBIT C.

The California Supreme Court ruled on December 18, 2000 that public defenders are not immunized from malpractice liability for their trial errors by a statute that protects public employees for acts committed within the exercise of their discretion. The court explained that the judicial abstention for which the state tort claims act calls insulates only fundamental or quasi-legislative policy decisions made by state employees and does not protect appointed counsel from liability for their 'operational' decisions. See, BARNER vs. LEEDS, Cal., No. S070377, 12/18/00. Quoting, Criminal Law Reporter, Vol. 68, No. 13, Page 284, 01/03/01. The Court finally stated, "If there are policy reasons for immunizing public defenders from liability, the court said, the law should be changed by the legislature, NOT THE COURT." See, EXHIBIT C.

THE STANDARD OF RETROACTIVITY:

This Court, Eighth Circuit Court of Appeals, has consistently used the criteria contained in CHEVRON OIL CO. vs. HUSON, 404 U.S. 97, 106, 92 S.Ct. 349, 355, 30 L.Ed.2d 296 (1971), for determining whether a decision should be given NONRETROACTIVE EFFECT. The Supreme Court stated, "[I]n our cases dealing with the nonretroactivity question, we have generally considered three seperate factors.

First, the decision to be applied nonretroactively must establish a new principle of law, [whether] by overruling clear past precedent on which litigants may have relied, ..., or by deciding an issue of first impression whose resolution was not clearly foreshadowed, ... Second, it has been stressed that "we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." . . . Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity." Quoting, MURPHY vs. FORD MOTOR CREDIT CO., 629 F.2d 556, 560 (8th Cir. 1980).

Judge Doty stated within his March 30, 2001, ORDER that the DZIUBAK decision was a new interpretation of the law that the District Court is extending its grant of immunity to court-appointed defense counsel in federal criminal cases. Therefore, this is an issue of first impression for this court, as it was for the District Court.

This Appellant therefore requests that this Court reverse the District Court's ORDER and remand his case for further proceedings to rectify the RETROACTIVE EFFECT violation which has resulted in substantial inequities, as Appellant had VESTED RIGHTS to rely on his right to file malpractice claims against his attorney, and that right cannot be taken away by subsequent legal decisions.

ISSUE: FOUR (4)

WHETHER THE DISTRICT COURT ERRED IN RULING THAT THE ISSUE OF CAUSATION, UNDER MINNESOTA STATE LAW, IS A MATTER OF FACT TO BE DECIDED BY A JUDGE.

On October 31, 2000, Magistrate Judge Mason stated within his REPORT AND RECOMMENDATION, Page 14, "[B]ased on this evidence, it appears that there is no genuine issue of material fact as to whether C.W. Faulkner's actions were the cause of Plaintiff's injury, and that Plaintiff cannot establish the CAUSATION ELEMENT of his malpractice claims." (emphasis added)

Under MINNESOTA CASE LAW, the issue of CAUSATION is a matter of fact to be decided by a jury, NOT A JUDGE. ST. PAUL, FIRE & MARINE INSURANCE COMPANY vs. HONEYWELL, 2000 WL 685007 (Minn. App. 2000), (holding CAUSATION is a question of fact for the jury's finding and therefore, in concluding appellant failed to establish CAUSATION, the district court "impermissibly weighed evidence and judged witness credibility.)(Citation omitted). Therefore, Magistrate Judge Mason and Judge Doty erred when Appellant's case was dismissed because a genuine question of material fact did not exist for a jury to decide.

The procedure of presenting the evidence and facts that should of been offered at the PLEA BARGAINING NEGOTIATIONS and at TRIAL of this underlying action is known as a "SUIT-WITHIN-A-SUIT" or "TRIAL-WITHIN-A-TRIAL." This is the accepted and traditional means of resolving the issues involved in the underlying proceeding in legal malpractice actions. See, TOGSTAD vs. VESLEY, OTTO, MILLER & KEEFE, 291 N.W.2d 686 (Minn. 1980); CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 NW2d 288 (1970).

The objective of the trial-within-a-trial concept is to establish CAUSATION, i.e. that the attorney's negligence caused injury, which means that the plaintiff does not have the burden of proving two cases in one lawsuit. See,

CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 N.W.2d 288 (1970).

CAUSATION: In other words, this Appellant must show, as he has, that, more likely than not, the attorney's [Appellees'] conduct was a substantial factor in causing the unfavorable result. See, 2175 LEMOINE AVENUE CORP. vs. FINCO, INC., 272 N.J.Super. 478, 640 A.2d 346 (1994); KEISTER vs. TALBOTT, 182 W.Va. 745, 391 S.E.2d 895 (1990); SHERRY vs. DIERCKS, 29 Wash.App. 433, 628 P.2d 1336 (1981).

Appellant LAMBROS has allowed this Court, the Eighth Circuit Court of Appeals, to offer the burden of proof as to the prejudice and constitutional violation of Appellant's Sixth Amendment rights when the court ruled, "[D]efendant [LAMBROS] who was convicted of a conspiracy to distribute cocaine was not subject to the statute's mandatory life sentence, where statute did not take effect until well after conspiracy end date charged in indictment. U.S. vs. LAMBROS, 65 F.3d 698, Head Note 1 (8th Cir. 1995). Appellant was resentenced to thirty (30) years, the maximum sentence, as per Brazilian Law due to his extradition from Brazil.

Therefore, the Eighth Circuit decided the underlying legal issues of whether the Appellee's erred and the trier of facts now transfers and should be decided by a jury whether Appellees' where negligent. In a jury trial, the court's function is to instruct the jury on the standard of care, and the jury's function is to apply that standard to the evidence of the case. See, DAUGHERTY vs. RUNNER, 581 S.W.2d 12 (Ky.App. 1978). The decision of negligence if for the trier of fact.

Issues of material fact that have been established by United States and Brazilian Law that Appellees' denied Appellant, that caused Constitutional violations to Appellant, thus cause of Appellant's injury:

a. Appellant was not subject to United States statute that demanded a mandatory life sentence without parole. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 698);

b. Appellant was prejudiced for purposes of Sixth Amendment ineffective assistance of counsel claim when Appellee's allowed Appellant to be sentenced to a longer sentence than allowed by law. See, GLOVER vs. U.S., 148 L.Ed.2d 604 (2001).

c. The Brazilian Constitution and Statutory laws do not allow for a prison sentence of life. In fact, a thirty (30) year sentence is

the maximum prison a person may receive in Brazil.

d. Appellees' committed fraud when they offered Appellant a seven (7) year plea agreement verbally during written plea bargain negotiations for a violation of Title 21 U.S.C. § 841(b)(1)(B), that requires a term of imprisonment which may not be less than ten (10) years due to prior convictions for a felony drug offense that have not become final. The fraud was due to the fact that the government DID NOT meet the requirement of filing a § 3553(e) or § 5K1.1 motion, as NOTICE MUST APPEAR WITHIN PLEA AGREEMENT. See, U.S. vs. COLEMAN, 895 F.2d 501, 504-07 (8th Cir. 1990)("[n]o defendant could reasonably read a plea agreement to bind the government to file a § 3553(e) [§5K1.1] motion absent an explicit promise to do so. Therefore, THERE CAN BE NO AMBIGUITY IN THE ABSENCE OF AN EXPRESS GOVERNMENT PROMISE IN THE PLEA AGREEMENTS TO FILE A §3553(e) MOTION. . . . The lack of such a promise is clear evidence that such a promise was not made." COLEMAN, at 506.

EXHIBIT B. (Appellant LAMBROS' letters to Attorney Gregory Stenmoe, BRIGGS & MORGAN, dated: November 11, 2000 and November 13, 2000)

Appellant LAMBROS therefore requests that this Court reverse the District Court's error in weighing the evidence, when the issue of CAUSATION is a question of fact for the jury's finding under MINNESOTA CASE LAW.

ISSUE: FIVE (5)

WHETHER THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT WITH RESPECT TO THE RACKETEERING (RICO) CLAIMS UNDER TITLE 18 U.S.C. § 1962(c) and (d) WHEN THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE COMMISSION OF PREDICATE ACTS.

On August 4, 1999, United States Magistrate Judge John M. Mason stated within his REPORT AND RECOMMENDATION, "DEFENDANTS HAVE NOT ESTABLISHED THAT PLAINTIFF'S AMENDED COMPLAINT FAILS TO STATE A CLAIM UNDER RICO." See, Page 15. Judge Mason also states:

> Plaintiff has alleged conduct by Defendants, working together, during which they made illegal use of the United States Postal Service and court system. He has alleged that Defendants thereby created an enterprise which engaged in a pattern of racketeering activity throughout his criminal proceedings, including bribery, mail fraud, wire fraud, obstruction of justice and witness tampering. Plaintiff has further alleged that this conduct by Defendants was done for the purpose of depriving him of his **CONSTITUTIONAL RIGHTS**. Defendants have presented no facts or legal argument to contradict these allegations. Although we may be skeptical as to Plaintiff's ability to prevail at trial on this claim, or indeed any of the claims alleged in Plaintiff's Amended Complaint, we simply have not been presented with a basis to recommend dismissal or summary judgment of this claim at this time. See, AUGUST 04, 1999, REPORT AND RECOMMENDATION by Magistrate Judge Mason, Pages 15 and 16.

On November 15, 1999, ORDER, by United States District Court Judge Doty ADOPTED the August 04, 1999, REPORT AND RECOMMENDATION by Magistrate Judge Mason after de novo review of the file and record of defendants motion to dismiss or for summary judgment.

On October 31, 2000, REPORT AND RECOMMENDATION by Magistrate Judge Mason adopts a very restrictive review as to Plaintiff-Appellant's CONSTITUTIONAL RIGHTS being deprived under his RICO CLAIMS, stating: "[I]n his response to Defendants' Motion, Plaintiff argues that we should not grant summary judgment on his RICO CLAIM because a genuine issue of material fact exists with regard to whether

Defendants coerced witnesses to give false testimony in connection with Plaintiff's criminal conviction. Plaintiff has simply failed to produce any evidence, through affidavit or otherwise, to support this contention." See, OCTOBER 31, 2000, REPORT AND RECOMMENDATION, Pages 14 and 15.

The February 14, 2001, ORDER by Judge Doty stated" "[W]ith respect to the magistrate's judge's conclusions concerning the merits or plaintiff's malpractice and RICO claims, the Court agrees that plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way prejudiced plaintiff's defense or that defendants coerced witnesses to give false testimony in plaintiff's criminal case. Therefore, dismissal of plaintiff's claims on the merits is appropriate and defendants' motion for summary judgment is granted." See, February 14, 2001, ORDER, Pages 3 and 4.

RICO - LIBERAL CONSTRUCTION CLAUSE:

Congress has expressly directed that RICO is to be "liberally construed to effectuate its remedial purposes." See, Pub.L.No. 91-452, §904(a), 84 Stat. 947. See also, SEDIMA, S.P.R.L. vs. IMREX CO., 473 U.S. 479 (1985). If RICO's language is plain and unambiguous, it is controlling. See, NOW vs. SCHEIDLER, 114 S.Ct. 798, 806 (1994). On the other hand, IF ITS LANGUAGE IS AMBIGUOUS, THE CONSTRUCTION THAT WOULD "EFFECTUATE ITS REMEDIAL PURPOSE" "BY PROVIDING ENHANCED SANCTIONS AND NEW REMEDIES" IS TO BE ADOPTED. See, 84 Stat. 923, 947 (1970); TURKETTE, 452 U.S. at 587-588; RUSSELLO, 464 U.S. at 27; SEDIMA, 473 U.S. at 497-98. As one commentator noted, "[T]he policy Congress properly mandated for the construction of RICO is one of a GENEROUS, rather than a parsimonious reading of its promise of new criminal and CIVIL REMEDIES. See, BLAKEY & GETTING, RICO: Basic Concepts, note 3, at 1032-33.

RICO - SUMMARY JUDGMENT:

If a genuine issue of MATERIAL FACT exists as to ANY MATERIAL RICO element, summary judgment is inappropriate. See, FEDERAL INS. CO. vs. AYERS, 772 F.Supp. 1503 (E.D.Pa. 1991)(denying summary judgment "because there are genuine issues of material fact regarding the commission of the alleged predicate acts"). The inquiry

is whether the evidence presents a sufficient disagreement to require submission to the jury, or whether it is so one-sided that one party must prevail as a MATTER OF LAW. See, ANDERSON vs. LIBERTY LOBBY, INC., 477 U.S. 242, 252, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986). The Court does not resolve questions of disputed fact, but simply decides whether there is a genuine issue of fact which must be resolved at trial. ANDERSON, 477 U.S. at 249. The facts must be viewed in the light most favorable to the non-moving party (Plaintiff-Appellant LAMBROS), and reasonable doubt as to the existence of a genuine issue of material fact is to be resolved against the moving party. See, CONTINENTAL INSURANCE CO. vs. BODIE, 682 F.2d 436, 438 (3rd Cir. 1982)(trial is required to resolve the conflicting versions of the parties).

The BUT-FOR CAUSATION requirement is eliminated in RICO CLAIMS and replaced by the more restrictive PROXIMATE CAUSATION REQUIREMENT between the injury and the harm alleged. See, BOWMAN vs. WESTERN AUTO SUPPLY CO., 985 F.2d 383, 388 (8th Cir. 1993).

RICO - BURDEN OF PROOF:

A simple preponderance of the evidence is all that is required to prove a predicate act and, therefore, the RICO violation. In SEDIMA, S.P.R.I. vs. IMREX CO., INC., 473 U.S. 479 (1985), the Supreme Court REJECTED A HIGHER STANDARD, observing that there was no indication that there was indication that Congress sought to depart from the general principle that "conduct [which] can be punished as criminal only upon proof beyond a reasonable doubt will support CIVIL SANCTIONS under a PREPONDERANCE STANDARD." Id. at 491 ('That the offending conduct is described by reference to criminal statutes does not mean that its occurrences must be established by criminal standards or that the consequences of a finding of liability in a private CIVIL ACTION are identical to the consequences of criminal convictions').

Plaintiff-Appellant alleged the following RICO predicate acts within his complaint: Title 18 U.S.C. (a) §1341 (relating to mail fraud); (b) § 1343 (relating to wire fraud); (c) § 1503 (relating to obstruction of justice);

(d) § 1512 (relating to tampering with witness, victim, or an informant); and

(e) § 201 (relating to bribery).

MAIL FRAUD:

Defendants used the U.S. POSTAL SERVICE and TELEPHONES to commit mail and wire fraud, that is defendant's knowingly or intentional participation in scheme, the use of interstate mails and wire communications in furtherance of all court proceedings in the criminal trial of Plaintiff-Appellant LAMBROS as to PLEA BARGAIN NEGOTIATIONS, MOTIONS, STRATEGY FOR TRIAL, and SENTENCING.

This Court, Eighth Circuit Court of Appeals, in U.S. vs. LAMBROS, 65 F.3d 698 (1995) proved that Appellant's mandatory life sentence without parole was not a legal sentence and vacated Count One (1). Appellant LAMBROS was resentenced to thirty (30) years, as per Article 75, the maximum sentence a person may receive in Brazil.

WRITTEN PLEA AGREEMENT:

The U.S. Governments written plea agreement that was endorsed by Appellees' was an UNENFORCEABLE CONTRACT. The written plea agreement was mailed to Appellant LAMEROS and discussed over the telephone between Appellees' and Appellant. Appellee C.W. Faulkner also telephoned Appellant's mother and father requesting there assistance in having Appellant sign the plea agreement that avoided a MANDATORY LIFE SENTENCE WITHOUT PAROLE when Appellant's mother and father had the June 14, 1991, LETTER AND "LEGAL OPINION" from the Rio de Janeiro, Brazil law firm of ESCRITORIO DE ADVOCACIA RUY RIBEIRO that stated the MAXIMUM PRISON SENTENCE APPELLANT COULD RECEIVE WAS THIRTY (30) YEARS. Appellee informed Appellant's parents that the law was not applicable in the United States. Appellant was the victim of misrepresentation and fraud by Appellee as PLEA AGREEMENTS are CONTRACTUAL IN NATURE, and are interpreted according to general contractual principles. See, U.S. vs. BRITT, 917 F.2d 353, 359 (8th Cir. 1990), cert. denied, 112 L.Ed.2d 1057 (1991); U.S. vs. CRAWFORD, 20 F.3d 933, 935 (8th Cir. 1994).

Where a PLEA AGREEMENT is AMBIGGUOUS, the ambiguities are construed AGAINST the government (and defendants' attorney). See, U.S. vs. COLEMAN, 895 F.2d 501, 505 (8th Cir. 1990); CARNINE vs. U.S., 974 F.2d 924, 928-29 (7th Cir. 1992)(the danger that a criminal defendant will be misled into relinquishing important CONSTITUTIONAL RIGHTS based on an INACCURATE UNDERSTANDING of the plea agreement increases in direct proportion to the agreement's vagueness.).

Courts allow Plaintiff's to recover damages on UNENFORCEABLE CONTRACTS if plaintiff was excusably ignorant, and defendant was not, of FACTS that made agreement UNENFORCEABLE. See, AMERICAN BUYING INS. SERV. vs. KORNREICH & SONS, 944 F.Supp. 240 (S.D.N.Y. 1996) ("[p]urported illegality of contract between purchasing group and brokerage group DID NOT PRECLUDE purchasing group from proving DAMAGES UNDER RICO.")(While courts generally do not grant restitution under agreements that are unenforceable due to illegality, courts will award damages in quantum meruit if it is found that parties are not in pari delicto, as when plaintiff is VICTIM OF MISREPRESENTATION by defendants. Id. at 241. Rule that FRAUD must be plead with particularity does not apply to pleading of "enterprise" and "control" elements of civil action under RICO. Id. at 241.)

In U.S. vs. EISEN, 974 F.2d 246, 247 (2nd Cir. 1992), Head Note 1, the court stated:

> . . . MISREPRESENTATION IN PLEADING AND PRETRIAL SUBMISSIONS were made in hope of fraudulently inducing settlement before trial, and alleged misconduct was intended to defraud the civil adversaries. Title 18 U.S.C.A. 1341.

In EISEN, attorneys, law firm's investigators, and its' office administrator were convicted of RICO violations in connections with firm's fraudulent conduct of civil litigation as plaintiff's counsel in personal injury case.

In BROWN vs. LaSALLE NORTHWEST NATIONAL BANK, 820 F.Supp. 1078, 1079, Head Note 5 (N.D. ILL. 1993)(Borrower sufficiently alleged pattern of RICO activity to support CIVIL RICO CLAIM against bank which lent her money for automobile purchase by claiming that bank used numerous insurance agents and numerous automobile dealers

to defraud numerous customers of their RIGHT TO NOTICES OF DEFENSES THEY HAD UNDER FEDERAL LAW AGAINST BANK'S COLLECTION OF LOANS ON AUTOMOBILE TRANSACTIONS THAT WENT BAD. Title 18 U.S.C.A. § 1961 et seq.) (In its opening brief, defendant argued that an omission can never support a RICO compliant . . . Where there is a duty to disclose, an elaborate coverup, a violation of fiduciary duty, or the omission is accompanied by affirmative MISREPRESENTATION, an omission can support a CLAIM OF MAIL OR WIRE FRAUD. Id. at 1081) Also see, Foot Note 3, at 1081-1083, "[S]imilar limitations are placed on claims based on MISREPRESENTATIONS OF LAW. See, MARCIAL vs. CORONET INSURANCE CO., 122 F.R.D. 529, 533-34 (N.D.Ill. 1998), aff'd, 880 F.2d 954 (7th Cir. 1989) To the extent the alleged misrepresentations were MISREPRESENTATIONS OF LAW, not fact, a fraud claim could still be stated.")

Appellees false and/or fraudulent information as to the actual legal sentence(s) Appellant could receive during PLEA BARGAIN NEGOTIATIONS was neither isolated, nor sporadic, and constitute a pattern of racketeering activity.

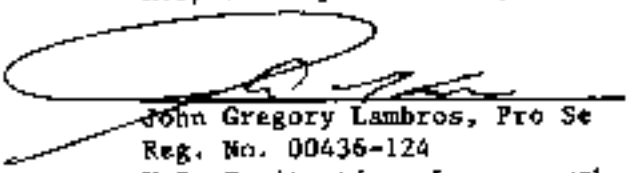
Appellant relied on Appellees' MISREPRESENTIONS OF LAW via mail and telephone. Therefore, injury occurred by reason of Appellees' actions. Appellees' supplied false and/or fraudulent information for the guidance of Appellant, thus subject to liability to loss caused by Appellees'. Appellant's justifiable reliance upon the information caused injury.

The Appellant therefore requests that this Court vacate the District Courts ORDER and remand for trial.

CONCLUSION

For the reasons stated herein, Appellant John Gregory Lambros respectfully requests that this Honorable Court make an Order reversing the District Court's rulings and remand the case for trial.

Respectfully submitted,



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UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY

I JOHN GREGORY LAMBROS declare under penalty of perjury that the foregoing is true and correct.

Executed on: **May 21, 2001**

John Gregory Lambros, Pro Se

IN THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS,

Plaintiff - Appellant

vs.

CHARLES W. FAULKNER, sued as Estate/Will Business Insurance of Deceased Attorney Charles W. Faulkner; SHEILA REGAN FAULKNER; FAULKNER & FAULKNER, Attorneys-at-Law; JOHN AND JANE DOE, persons employed by Attorney C.W. Faulkner, Sheila Regan Faulkner and Faulkner in the representation of John Gregory Lambros,

Defendants - Appellees

CASE NUMBER

01-2037

On Appeal from the United States District Court

for the District of Minnesota

Case No. CIV-98-1621-DSD/JMM

EXHIBITS OF PLAINTIFF - APPELLANT

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EXHIBIT INDEX

1. **EXHIBIT A:** **See, BRIEF Page 4.** February 23, 2001, filed on March 01, 2001, "MOTION TO ALTER OR AMEND JUDGEMENT AND/OR HAVE JUDGMENT VACATED UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e)." Total of 11 pages including certificate of service.

2. **EXHIBIT B:** **See, BRIEF Page 23.** Appellant LAMBROS' letters to Attorney Gregory Stenmoe, BRIGGS & MORGAN, dated: November 11, 2000 and November 13, 2000, with exhibits. Total of 11 pages.

3. **EXHIBIT C:** **See, BRIEF Page 19.** Appellant LAMBROS' letter to Attorney Gregory Stenmoe, BRIGGS & MORGAN, dated: January 16, 2001 with copy of JOHNSON vs. HALLORAN, Ill. No. 89594, 12/1/00 and BARNER vs. LEEDS, Cal. No. S070377, 12/18/00, as offered within the CRIMINAL LAW REPORTER. Total of 4 pages.

4. **EXHIBIT D:** **INTERNET WEB DIRECTORY OF ORIGINAL FILE IN THIS ACTION.** See, **BRIEF Page v.** Plaintiff-Appellant **LAMBROS** has established an Internet World Wide Web directory and **SEARCH ENGINE** within some of most of the original file in this action for this Court's convenience and researching of issues in this action. Attached are pages 1, 14, 15, 16, 17, 18, & 19 of the **BOYCOTT BRAZIL** HomePage that lists the original filings in this action that may be **TEXT SEARCHED** with **"BOOLEAN"** search feature. The internet web directory is located at:

www.brazilboycott.org

UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY

I JOHN GREGORY LAMBROS declare under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C.A. § 1746.

EXECUTED ON: **May 21, 2001.**

John Gregory Lambros, Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS, Plaintiff, vs. CHARLES W. FAULKNER, sued as Estate/Will/Business Insurance of Deceased Attorney Charles W. Faulkner, SHEYLA REGAN FAULKNER, FAULKNER AND FAULKNER, Attorneys at Law, and JOHN AND JANE DOES. Defendant.	*	CIVIL CASE NO. 98-1621 (DSD/JMM) AFFIDAVIT FORM

MOTION TO ALTER OR AMEND JUDGMENT AND/OR HAVE JUDGMENT VACATED UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e)

COMES NOW Plaintiff JOHN GREGORY LAMBROS (hereinafter Movant), in the above-entitled action pursuant to Federal Rules of Civil Procedure, Rule 59(e). Although Rule 59(e) explicitly authorizes a court only to "alter or amend" its judgment, a party seeking to have a judgment vacated may also do so under Rule 59(e). See, VREEKEN vs. DAVIS, 718 F.2d 343 (10th Cir. 1983). (Rule 59(e) refers only to alteration or amend of a "judgment," but it has been construed as permitting the trial court to vacate and set aside orders disposing of actions before trial, including dismissal orders.) See, FINANCIAL SERVICES CORP. vs. WEINDRUCH, 764 F.2d 197 (7th Cir. 1985); AMERICAN LIFE ASSURANCE CO. vs. PLANNED MARKETING ASSOC. INC., 389 F.Supp. 1141 (ED Va. 1974).

The effects of this timely filed Rule 59(e) Motion suspends the finality of the judgment for purposes of appeal and TOLLS the running of the 30 day period within which notice of appeal must be filed. See, Fed.R. App.P. Rule 4(a)(4); VREEKEN vs. DAVIS, 718 F.2d 343 (10th Cir. 1983).

EXHIBIT A.

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Rule 59(e) of the Federal Rules of Civil Procedure allows this filing within ten (10) days of entry of judgment/order. See, MOORE vs. ST. LOUIS MUSIC SUPPLY CO., 526 F.2d 801 (8th Cir. 1975); VARLEY vs. TAMPAX INC., 855 F.2d 696 (10th Cir. 1988).

FACTS:

1. On February 14, 2001, Judge Doty, ORDERED:

   a. Defendant's motion to dismiss or for summary judgment [Doc. No. 90] is granted.

   b. Plaintiff's motion for appointment of a legal expert [Doc. No. 100] is denied as moot.

2. Plaintiff LAMBROS received the February 14, 2001, ORDER on February 22, 2001, via Attorney Stenmoe. (A poor quality copy)

3. Plaintiff LAMBROS' TRIAL ended on JANUARY 15, 1993, with guilty verdicts.

4. The Minnesota Supreme Court decision in DZIUBAK vs. MOTT, 503 N.W.2d 771, was decided on AUGUST 6, 1993. The decision was based upon common law tort principles, not Minnesota Statute, thus the Minnesota Supreme Court is the final arbiter. The decision grants immunity to Minnesota Public defenders.

5. Judge Doty affirmed the magistrate judge's conclusion that the Minnesota Supreme Court would LIKELY EXTEND its GRANT OF IMMUNITY to defendant's in this action. Therefore, dismissing plaintiff's malpractice claim.

6. Judge Doty dismissed plaintiff's claims on the MERITS, stating plaintiff was NOT PREJUDICED.

ISSUE ONE (1):

MINNESOTA SUPREME COURT DECISIONS CANNOT BE APPLIED RETROACTIVELY WITHOUT DIRECTIVE REQUIRING RETROACTIVE APPLICATION.

EXHIBIT A.

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7. Applying retroactivity analysis to the August 6, 1993, Minnesota Supreme Court decision in DZIUBAK vs. MOTT, would interfere with Plaintiff LAMBROS' VESTED RIGHTS. The Court decision DID NOT state a directive requiring retroactive application. See, LANDGRAF vs. USI FILM PRODUCTS, 511 U.S. 24, 128 L.Ed.2d 229 (1994).

8. On December 1, 2000, the ILLINOIS SUPREME COURT ruled, "apart from the statute, public defenders DO NOT enjoy sovereign immunity from malpractice actions." In a concurring opinion, Justices Freeman and McMorrow, reached the same result as the majority by APPLYING RETROACTIVITY ANALYSIS set forth in LANDGRAF, Id.. See, JOHNSON vs. HALLORAN, Ill. No. 89594, (12/1/00).

9. On December 18, 2000, the California Supreme Court ruled that PUBLIC DEFENDERS ARE NOT IMMUNIZED FROM MALPRACTICE LIABILITY for their TRIAL ERRORS. See; BARNER vs.LEEDS, Cal. No. S070377, 12/18/00, affirming 63 CrL 111.

10. The Fifth Circuit stated in COX vs. SCHWEIKER, 684 F.2d 310, 311 Head Note 9, (5th Cir. 1982), "In a case involving a judge-made COMMON-LAW PRINCIPLE, NO RIGHTS VEST OR EVEN ARISE UNTIL THE JUDGE HAS DECLARED WHAT THE LAW IS whereas in case of a statute the entitlement vests once a person fulfills statutory requirements and it vests despite the fact that an adjudicator has misapplied the statute, and subsequent legislative amendment to those entitlements do not affect prior vested rights unless the legislature so declared."

11. Plaintiff is requesting this court to ORDER that the Minnesota Supreme Court decision in DZIUBAK can not be applied retroactively to defendants.

ISSUE TWO (2):

EX POST FACTO CLAUSE PREVENTS THE MINNESOTA SUPREME COURT RULING IN DZIUBAK vs. MOTT, TO NEGATIVELY AFFECT PLAINTIFF LAMBROS AND OFFERING DEFENDANTS A GRANT OF IMMUNITY IN THIS ACTION.

12. The EX POST FACTO CLAUSE simply restated the well-established principle that a new law may only be applied to conduct occurring AFTER the date of its enactment. See, MILLER vs. FLORIDA, 96 L.Ed2d 351, 354 Head Note 4 (1987)

13. An "ex post facto law" is one that reaches back in time to punish acts which occurred before enactment of the law; a penal statute may also be ex post facto enactment if it adds a new punishment to the one that was in effect when the crime was committed. See, PEELER vs. HECKLER, 781 F.2d 649, Head Note 1 (8th Cir. 1986). Plaintiff LAMBROS believes that damages that may be incurred by Defendants may qualify within the punitive purposes of "ex post facto."

14. In MILLER vs. FLORIDA, Id. 354, the Supreme Court stated, [. . . on the other hand, a change in the law that alters a SUBSTANTIAL RIGHT can be ex post facto even if the statute takes a seemingly PROCEDURAL FORM."

15. Plaintiff LAMBROS' trial ended on JANUARY 15, 1993 and the Minnesota Supreme Court ruled on DZIUBAK vs. MOTT, on AUGUST 6, 1993.

ISSUE THREE (3):

PLAINTIFF LAMBROS WAS PREJUDICED UNDER THE PREJUDICE PRONG OF STRICKLAND vs. WASHINGTON, 466 U.S. 668 (1984), AS TO DEFENDANT'S DEFICIENT PERFORMANCE THAT LEAD TO AN INCREASED PRISON SENTENCE FOR PLAINTIFF LAMBROS.

16. Judge Doty stated in his February 13, 2001, filed February 14, 2001, ORDER, "With respect to the magistrate's judge's conclusions concerning the MERITS of plaintiff's malpractice and RICO claims, the court agrees that plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way PREJUDICED plaintiff's defense OR that defendants coerced witnesses to give false testimony in plaintiff's criminal case. Therefore, dismissal of plaintiff's claims on the MERITS is appripriate

and defendants' motion for summary judgment is granted." See, ORDER, pages 3 and 4.

17. **COUNSEL ERROR REGARDING SENTENCE NEEDN'T CAUSE SIGNIFICANT INCREASE TO BE "PREJUDICIAL."** On January 9, 2001, the United States Supreme Court stated in GLOVER vs. U.S., No. 99-8576, that "Deficient performance by counsel that leads to an increase in a prison sentence imposed under the U.S. Sentencing Guidelines is "PREJUDICIAL" under the Sixth Amendment test for counsel effectiveness **REGARDLESS OF THE AMOUNT OF THE INCREASE.** The court overturned an appellate court's ruling that a sentence increase is not "PREJUDICIAL" under STRICKLAND vs. WASHINGTON, 466 U.S. 668 (1984), unless it is "SIGNIFICANT." In the GLOVER case the petitioner filed a 28 U.S.C. §2255 petition before the court as to his convictions of money laundering, racketeering, and tax evasion. At sentencing, the prosecution opposed the grouping of the money laundering counts with the other convictions. Defense counsel did not submit papers opposing the issue or offer much oral argument on it. The same attorney failed to raise the grouping issue at all on appeal. The fact that the counts were not grouped resulted in a sentence of imprisonment that was six to 21 longer than it would have been if grouping had occurred. The Supreme Court saw no authority for the proposition that a minimal amount of additional incarceration time **CANNOT CONSTITUTE PREJUDICE** in the context of a claim of ineffective assistance of counsel. On the contrary, it said, prior cases suggest that **"ANY AMOUNT OF ACTUAL JAIL TIME HAS SIXTH AMENDMENT SIGNIFICANCE." THE CLAIM HERE IS THAT COUNSEL FAILED TO CHALLENGE A CORRECTABLE ERROR IN THE SENTENCING COURT'S CALCULATION,** THE COURT EMPHASIZED.

18. Therefore, if GLOVER was "PREJUDICED" by a sentence of imprisonment that was six to 21 months longer than he should of received, Plaintiff LAMEROS was surely "PREJUDICED" by the fact that he received and was told by by Defendant's that he could only receive a **MANDATORY LIFE SENTENCE WITHOUT**

PAROLE during his PLEA BARGAIN NEGOTIATIONS which was not true and overturned by the Eighth Circuit Court of Appeals in 1995. Then during resentencing for the illegal sentence the Court followed the Extradition Treaty between BRAZIL and the United States by sentencing plaintiff LAMBROS to THIRTY (30) YEARS, the most Brazilian Law offers. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). PLAINTIFF LAMBROS WAS PREJUDICED. This example is not inclusive of all issues within plaintiff's complaint, only one very strong example of PREJUDICE.

ISSUE FOUR (4):

> UNDER MINNESOTA LAW THE ISSUE OF CAUSATION IS A MATTER OF FACT TO BE DECIDED BY A JURY, NOT A JUDGE. See, St. Paul, Fire & Marine Insurance Company, vs. Honeywell, 2000 WL 685007 (Minn. App. 2000)

19. This Court stated that Plaintiff claims were without MERIT. BLACK'S LAW DICTIONARY, Seventh Edition defines MERITS: "The elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points."

20. The procedure of presenting the evidence that SHOULD HAVE BEEN OFFERED AT THE TRIAL AND PLEA BARGAIN NEGOTIATIONS of this underlying action is known as a "SUIT-WITHIN-A-SUIT" or "TRIAL-WITHIN-A-TRIAL." This is the accepted and traditional means of resolving the issues involved in the underlying proceeding in LEGAL MALPRACTICE ACTIONS. See, TOGSTAD vs. VESELY, OTTO, MILLER & KEEFE, 291 N.W.2d 686 (Minn. 1980); CHRISTY vs.SALITERMAN, 288 Minn. 144, 179 N.W.2d 288 (1970).

21. EVIDENTIARY CONSIDERATIONS. Normally, in a LEGAL MALPRACTICE action, the issues of negligence, proximate cause and damage MUST be decided by the TRIER OF FACT BASED ON THE RECREATED EVIDENCE. In a jury trial, the jury

is instructed as the jury should have been instructed [or the government would be instructed as to the laws of BRAZIL] in the underlying action. NIKA vs. DANZ, 199 Ill.App.3d 296, 145 Ill.Dec. 255, 556 N.E.2d 873 (1990). Where there was no objection, a plaintiff augmented such evidence with the opinion of the judge and jurors in the prior action concerning what "WOULD" have happened had the attorney not erred. WATWOOD vs. BRADFORD, 72 A.2d 41 (D.C.Mun.App. 1950).

22. PROVING THE UNDERLYING ACTION - THE BURDEN OF PROOF: In General: In an action to recover damages caused by the attorney's malpractice, the plaintiff has the burden of proving EVERY ESSENTIAL ELEMENT of the cause of action. See, GODBOUT vs. NORTON, 262 N.W.2d 374 (Minn. 1977), cert. denied, 437 U.S. 901, 98 S.Ct. 3086, 57 L.Ed.2d 1131 (1978); CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 N.W.2d 288 (1970).

23. Thus, the plaintiff must establish (1) the attorney-client relationship or other basis of duty, (2) the **WRONGFUL ACT OR OMISSION**, (3) the proximate **CAUSATION** of damage, and (4) the measure of those damages. See, SUKOFF vs. LEMKIN, 202 Cal.App.3d 740, 249 Cal.Rptr. 42 (1988)(quoting text).

24. A plaintiff is said to have a multiple burden of proof where the attorney's error allegedly impaired the plaintiff's CAUSE OF ACTION or DEFENSE. This means that the plaintiff must establish not only the attorney's negligence but also that there should have been a better result in the underlying lawsuit or matter. See, ROSS vs. ADELMAN, 725 S.W.2d 896 (Mo.App. 1987).

25. The **OBJECTIVE** of the TRIAL-WITHIN-A-TRIAL CONCEPT IS TO ESTABLISH **CAUSATION**, i.e. that the attorney's negligence caused injury, which means that the plaintiff does have the burden of proving two cases in one lawsuit. See, CHRISTY vs. SALITERMAN, 288 Minn. 144, 179 N.W.2d 288 (1970).

26. **CAUSATION: IN OTHER WORDS, THIS PLAINTIFF MUST SHOW [AS HE HAS] THAT, MORE LIKELY THAN NOT, THE ATTORNEY'S [DEFENDANT] CONDUCT WAS A SUBSTANTIAL FACTOR IN CAUSING THE UNFAVORABLE RESULT.** See, 2175 LEMOINE AVENUE CORP. vs. FINCO, INC., 272 N.J.Super. 478, 640 A.2d 346 (1994); KEISTER vs. TALBOTT, 182

W.Va. 745, 391 S.E.2d 895 (1990); SHERRY vs. DIERCKS, 29 Wash.App. 433, 628 P.2d 1336 (1981).

27. Plaintiff LAMBROS has allowed the EIGHTH CIRCUIT COURT OF APPEALS to show defendants' conduct was a substantial factor in causing unfavorable results to Plaintiff. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995) (Defendant (LAMBROS) who was convicted of a conspiracy to distribute cocaine **WAS NOT** subject to statute's **MANDATORY LIFE SENTENCE**, where statute did not take effect until will after conspiracy end date charged in indictment. Id. at 698 Head Note 1.) Plaintiff LAMBROS was resentenced to thirty (30) years as per Brazilian Law due to the Extradition Treaty between Brazil and the U.S.

28. Therefore, the Eighth Circuit decided the underlying legal issue of whether the defendants' erred and the trier of **FACTS** now transfers and should be decided by a **JURY** whether defendants' where negligent. In a jury trial, the court's function is to instruct the **JURY** on the standard of care, and the **JURY'S** function is to apply that standard to the evidence of the case. See, DAUGHERTY vs. RUNNER, 581 S.W.2d 12 (Ky.App. 1978). The decision of negligence is for the trier of fact.

29. Moreover, under **MINNESOTA CASE LAW**, the issue of **CAUSATION** is a **FACT** to be decided by a **JURY**, **NOT A JUDGE**. See, ST. PAUL, FIRE & MARINE INSURANCE COMPANY, vs. HONEYWELL, 2000 WL 685007 (Minn.App. 2000), (holding **CAUSATION** is a question of **FACT FOR THE JURY'S FINDING** and therefore, in concluding appellant failed to establish **CAUSATION**, the district court "IMPERMISSIBLY WEIGHED EVIDENCE AND JUDGED WITNESS CREDIBILITY.)(Citation omitted). Therefore, Magistrate Judge Mason erred when he recommended this case be dismissed because a genuine question of material fact did not exist for a jury to decide.

CONCLUSION

30. Lawyers are always expected to know what is proper and improper pursuant to the law, PATTERSON vs. JEWISH HOSPITAL & MEDICAL CENTER, (1978) 94

Misc. 2d 680, 405 NYS2d 194, affd (2nd Dept) 65 App Div 2d 553, 409 NYS2d 124, and to present the wisest course to the client. See, THUNDERSHIELD vs. SOLEM, (1977, DC SD) 429 F.Supp. 944, aff'd (CA8 SD) 565 F.2d 1018, cert. denied, 55 LEd2d 805.

31. Official immunity is for officials, not for citizen who do not hold office. This immunity protects officials from personal liability in civil actions for mistakes, or even negligence. However, when an official violates a person's constitutional rights, or commits a crime, then, ipso facto, he is stripped of his office, and becomes an individual, fully answerable for his misdeeds. **FRAUD**, something that by the meaning of the word itself can only be done knowingly, would strip an official of his office, and make him liable in a civil action as an individual. **FRAUD** by a public defender certainly would strip him of his official immunity and make him liable as an individual. This is beautifully explained in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), in which the Supreme Court of the United States lectures on the meaning and history of official immunity. Where an attorney recklessly and unknowledgeably renders an opinion on a subject, he may be held liable for **FRAUDULENT MISREPRESENTATION**. See, BERKMAN vs. COHN (1933) 111 NJL 229, 168 A 290. BALLENTINE'S LAW DICTIONARY, 3rd Edition (1969), defines **FRAUD** to incorporate the surrendering of legal rights of another individual within its definition, along with the suppression of the truth, or other device contrary to the plain rules of common honesty.

32. Attorney's are ABSOLUTELY RESPONSIBLE FOR RESEARCHING CASE LAW DECISIONS AS WELL AS ALL TEMPORARY SUPPLEMENTAL OFFICIAL TEXTS OF THE CASE LAW SUCH AS ADVANCE SHEETS. See, PROCANIK vs. CILLO, 206 NJ Super 270, 502 A2d 94.

33. Plaintiff LAMBROS requests this court to DISMISS Defendants' motion to dismiss or for summary judgment.

34. I declare under penalty of perjury that the foregoing is true

EXHIBIT A.

and correct.

EXECUTED ON: February 23, 2001

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CERTIFICATE OF SERVICE

LAMBROS vs. FAULKNER, et al., Civil No. 98-1621(DSD/JMM)

I hereby state under the penalty of perjury that a true and correct copy of the following:

a. MOTION TO ALTER OR AMEND JUDGMENT AND/OR HAVE JUDGMENT VACATED UNDER FEDERAL RULES OF CIVIL PROCEDURE RULE 59(e). Dated **February 23, 2001**

was served on the following this **23rd day of February, 2001**, via U.S. Mail through the prison authorities, to: (MAILBOX RULE, HOUSTON vs. LACK, 101 L.Ed.2d 245 (1988))

PLEASE FILE:

To DSD
JF

1. Clerk of the Court, District of Minnesota, 316 North Robert Street, St. Paul, Minnesota 55101. One original and one copy.

2. Attorney Gregory J. Stenmoe, BRIGGS & MORGAN, 2400 IDS CENTER, 80 South Eighth Street, Minneapolis, Minnesota 55402.

3. Attorney Donna Rae Johnson and Attorney Deborah Ellis, 700 St. Paul Bldg., 6 West Fifth Street, St. Paul, Minnesota 55102.

4. Internet release to BOYCOTT BRAZIL SUPPORTERS and HUMAN RIGHTS GROUPS GLOBALLY.

5. LAMBROS family members.

John Gregory Lambros, Pro Se
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Web site: www.brazilboycott.org (Please Support)

EXHIBIT A.

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November 11, 2000

NOV 20 2000

John Gregory Lambros
Reg. No. 00436-124
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Attorney Gregory J. Stenmoe
BRIGGS & MORGAN
2400 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Web site: www.briggs.com

RE: PARTIAL COMMENTS & OBJECTIONS TO OCTOBER 31, 2000 - REPORT & RECOMMENDATION

Dear Greg:

As per our telephone conversation on Friday afternoon November 10, 2000, I would like to highlight the following:

1. You will be requesting an extension of time to November 30, 2000 to file our response due to your out of town hearings.

2. You will file, as attachments to your/our RESPONSE to Judge Mason's October 31, 2000, REPORT & RECOMMENDATION, all of my letters to you as to the REPORT & RECOMMENDATION. We both agreed this would cover all parties concerned. Thank you.

3. I offered you an overview on Title 18 U.S.C.A. § 3553(e) and suggested your review of U.S. vs. COLEMAN, 895 F.2d 504, 505-507 (8th Cir. 1990), as to:

a. § 3553(e) provides upon Motion from the Government the Court shall have the authority to impose a sentence **BELOW** a level established by **STATUTE AS MINIMUM SENTENCE**. . . . Such sentence shall be imposed in accordance with the **GUIDELINES** and policy statements issued by the Sentencing Commission . . . Id. at 504.

b. Section 3553(e)'s counterpart under the **GUIDELINES** is § 5K1.1. Which states "UPON MOTION FROM THE GOVERNMENT . . ., the Court **MAY DEPART FROM THE GUIDELINES**" Id. at 504.

c. Section 3553(e) and § 5K1.1. have different effects. Id. at 504.

d. The courts have construed the motion requirements the same. Id. at 504.

e. "The motion requirement is clear and unambiguous. There are **NO STATUTORY EXCEPTIONS.**" Id. at 505.

f. An express promise to file a motion unambiguously binds the government. The lack of such a promise is **CLEAR EVIDENCE THAT SUCH A PROMISE WAS NOT MADE. Id. at 506.**

EXHIBIT B.

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g. "[n]o defendant could reasonably READ A PLEA AGREEMENT TO BIND THE GOVERNMENT TO FILE A § 3553(e) [§5K1.1] MOTION ABSENT AN EXPLICIT PROMISE TO DO SO." Id. at 506.

PLEA AGREEMENT:

4. On November 16, 1992, U.S. Attorney Heffelfinger and U.S. Assistant Attorney Peterson offered John Gregory Lambros a WRITTEN PLEA AGREEMENT. See, EXHIBIT G-1 thru G-6 within Lambros' original June 15, 1998 DECLARATORY JUDGMENT/COMPLAINT.

5. The government states that C.W. Faulkner and the government had discussions over a ten (10) day period as to the written plea agreement.

6. The plea agreement DOES NOT mention either Title 18 U.S.C.A. §3553(e) or its counterpart under the GUIDELINES §5K1.1.

7. The plea agreement states the following FACTS:

a. Conviction on Count I charge, however, would carry a MANDATORY TERM OF IMPRISONMENT OF LIFE WITHOUT PAROLE . . . (Plea Agreement page 2)

b. The government would agree to dismiss Counts I, V, and VI.

c. The government would prosecute on Count VIII charge that carries a MANDATORY MINIMUM term of imprisonment of TEN (10) YEARS without parole. (Plea Agreement page 2).

d. The defendant understands that his sentence on the Count VIII charge will be determined and based upon the applicable sentencing guidelines under the Sentencing Reform Act of 1984. (Plea Agreement page 3).

e. [Lambros'] "[a]pplicable guideline range would be 292 to 365 months." (Plea Agreement, page 5)

C.W. FAULKNER'S NOVEMBER 17, 1992 LETTER TO LAMBROS WITH PLEA AGREEMENT:

8. On November 17, 1992, C.W. Faulkner sent LAMBROS a letter with the government's November 16, 1992 PLEA AGREEMENT. C.W. Faulkner stated the following FACTS within his letter: (See EXHIBIT H, in original June 15, 1998 DECLARATORY JUDGEMENT/COMPLAINT)

a. Attached please find the results of our negotiation for a PLEA AGREEMENT in your case. IT ALLOWS YOU CONSIDERABLE LATITUDE TO ARGUE THAT YOU OUGHT TO BE TREATED IN THE SAME RANGE AS THE OTHER DEFENDANTS AND IT AVOIDS THE MANDATORY LIFE COUNT.

EXHIBIT B.

b. The key words in the above is "YOU OUGHT TO BE TREATED IN THE SAME RANGE AS THE OTHER DEFENDANTS."

c. At that time I knew that the MOST prison time any of the other defendants received was FOUR (4) YEARS.

d. Therefore, C.W. Faulkner committed FRAUD & DECEIT when he informed my father and myself that I would only receive SEVEN (7) YEARS IN PRISON FOR ALL THE CHARGES IF I TOOK THE PLEA AGREEMENT. It was legally impossible for me to receive same due to §3553(e) and §5K1.1.

EVIDENTIARY HEARING:

9. Should we request an EVIDENTIARY HEARING to call individuals as to C.W. Faulkner's statements regarding the SEVEN (7) YEARS?

Hopefully the above will assist you as to the FRAUD Faulkner committed in trying to get me to sign the plea agreement. You may want to refer to my letter dated November 9, 2000 as to my overview on PLEA AGREEMENTS.

Correct me if I'm wrong, since the seven (7) year prison sentence FAULKNER stated I would receive was not legally possible, then the BUT FOR logic within our action would have to be, LAMBROS would of been offered a plea agreement of less than 292 to 365 months (as per the plea agreement) if LAMBROS had been offered the correct information as to the MAXIMUM SENTENCE he could receive. That being, THIRTY (30) YEARS DUE TO ARTICLE 75 OF THE BRAZILIAN LAW. (365 months is 5 more months than possible under Brazilian Law).

Thanking you in advance for your continued assistance.

Sincerely,

John G. Lambros

EXHIBIT B.

November 13, 2000

NOV 17 2000

John Gregory Lambros
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RE: PARTIAL COMMENTS & OBJECTIONS TO OCTOBER 31, 2000 - REPORT & RECOMMENDATIONS

Dear Greg:

On November 11, 2000, I wrote and offered an overview of TITLE 18 U.S.C.A. §3553(e) and suggested your review of U.S. vs. COLEMAN, 895 F.2d 501, 505-507 (8th Cir. 1990), as to the governments requirement in filing both a §3553(e) and 5K1.1 if they choose to depart under the MINIMUM STATUTORY SENTENCE and the SENTENCING GUIDELINES. **ALSO NOTICE MUST APPEAR WITHIN A SIGNED PLEA AGREEMENT.**

REPORT & RECOMMENDATION: Judge Mason has stated on page two (2) "[P]laintiff was offered a plea bargain of seven (7) years in prison for all charges pending against him. Plaintiff did not accept this plea agreement."

The above statement is false in this respect. First, yes C.W. Faulkner did state that I could receive a seven (7) year plea bargain. This is supported by:

1. August 27, 1999, AFFIDAVIT OF DONNA RAE JOHNSON IN SUPPORT OF MOTION TO DISMISS OR SUMMARY JUDGEMENT AND OPPOSING REPORT AND RECOMMENDATION. See, Pages 2, 3, and referenced EXHIBIT B, page A-32 thru 35. (Affidavit of Jeffrey Orren, dated January 27, 1994. **(ATTACHED FOR YOUR REVIEW)**

But, he could not legally of offered me the seven (7) year plea bargain because the government DID NOT offer same within the plea agreement. See, COLEMAN, 895 F.2d at 506 (. . ., no defendant could reasonably read a PLEA AGREEMENT to bind the government to file a §3553(e) motion absent an explicit promise to do so. Therefore, there can be no ambiguity in the **ABSENCE** of an express government promise in the plea agreements to file a §3553(e) motion")

THEREFORE, C.W. FAULKNER COMMITTED FRAUD AND VIOLATED THE STANDARDS OF DUE PROCESS THAT RESULTED IN A LOSS OF LIBERTY TO ME THAT IS A DENIAL OF A CONSTITUTIONAL RIGHT.

Hopefully the above AFFIDAVITS will assist you in your argument.

Sincerely,
John G. Lambros

EXHIBIT B.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,

Plaintiff,

vs.

CHARLES W. FAULKNER, sued as Estate/Will Business Insurance of deceased Attorney Charles W. Faulkner, SHEILA REGAN FAULKNER, FAULKNER & FAULKNER, and JOHN & JANE DOE

Defendants

CIVIL CASE # 98-1621 DSD/JMM

AFFIDAVIT OF DONNA RAE JOHNSON IN SUPPORT OF MOTION TO DISMISS OR SUMMARY JUDGMENT AND OPPOSING REPORT AND RECOMMENDATION

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Donna Rae Johnson, being first duly sworn, on oath, states as follows:

1. That I am one of the attorneys representing the Defendants in the above-captioned matter, and that I make this affidavit in support of Defendants motion to dismiss and/or motion for summary judgment, and in opposition to the Report and Recommendation.

2. That, although we have obtained the United States v. Lambros files from Colia Ceisel, who represented Plaintiff during his appeal, we have been unable to locate the Seven (7) Volumes of the trial transcripts to date. Neither the Eighth Circuit Administrator, the Clerk of District Court, nor attorney Ceisel can locate the transcripts. We will proceed with the information we have at hand, but if the Court finds we are lacking documentation from the transcripts, we ask that the court allow us the courtesy of locating the transcripts for additional

EXHIBIT B.

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documentation.

3. To assist the court in its review of Defendant's Objections to Report and Recommendation, affiant will respond to each claim made by Plaintiff in his Amended Complaint, asserting malpractice of Charles W. Faulkner and attach relevant documents in opposition to that claim. The following Exhibits will be referenced as needed:

Exhibit A - United States v. Lambros, 65 F3d 698 (8th Cir. 1995), cert. denied, 116 S.Ct. 796 (1996)
Exhibit B - Appendix of Appellant, Case No. 94-1332MNMI
Exhibit C - Resentencing Memoradum dated February 19, 1997
Exhibit D - Brief of Appellant - Case No. 94-1332 MNMI
Exhibit E - Brief of Appellee - Case No. 94-1332MNMI
Exhibit F - Affidavit of Charles W. Faulkner dated 7/21/93 and transmittal letter
Exhibit G - Summary Dismissal, Board of Prof. Responsibility
Exhibit H - Docket No. 4-89-82, United States v. Lambros
Exhibit I - Federal Public Defender letter to C.W. Faulkner, 9/92
Exhibit J - Plaintiff's letter to counsel, 12/21/92
Exhibit K - Addendum of Appellant, Case No. 94-1332MNMI
Exhibit L - Supplemental Brief of Appellant, Case No. 94-1332MNMI
Exhibit M- United States v. Lambros, unpublished opinion No. 97-1553
Exhibit N - Indictment of John Gregory Lambros

4. **Defendants response to Plaintiff's Claim I:**

Although an error was made by the prosecutor regarding the statement in his proposed plea agreement that conviction on the Count I charge would carry a mandatory term of imprisonment of life without parole, and neither counsel nor the court caught the mistake, that matter was corrected on appeal. Also, the Plaintiff acknowledged that the Court could have sentenced him to life imprisonment under the statute in effect at the time of his offense. United States v. Lambros, 65 F3d 698, 700 (8th Cir. 1995) (Exhibit A, attached hereto) The Court must find that the Plaintiff has suffered damages from counsel's actions, and it is clear that Plaintiff could have served just seven years, instead of 360 months, had he followed counsel's recommendation.

EXHIBIT B.

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Plaintiff's argument that he might have accepted a plea bargain if counsel had obtained a plea bargain for fewer years and had properly advised him is refuted by Plaintiff's history and the affidavit of Jeffrey Orren, dated January 27, 1994, Page A-32, Appendix of Appellant (Exhibit B attached hereto) Mr. Orren's affidavit specifically states that in conversations he had with Plaintiff, Plaintiff told Mr. Orren that *he wouldn't have accepted a plea if he hadn't had to do any time at all*. (emphasis added) It was Mr. Orren's opinion that this conversation affirmed that Plaintiff was not competent to stand trial, but the court determined that he was competent. In the Resentencing Memorandum filed February 19, 1997, the Honorable Robert G. Renner, in declining an additional competency hearing (two had already been held) noted that the district court had found Plaintiff competent to stand trial. (Exhibit C attached hereto)

It is clear from the trial transcripts, which are cited by Douglas Peterson in Appellee's Brief, pages 38 to 44, (Exhibit E attached hereto) that Plaintiff was fully competent to stand trial, exhibiting a clear understanding of the charges against him. There is nothing in any of the proceedings which would indicate that Plaintiff would have been acquitted if counsel had done anything differently.

5. **Defendants response to Plaintiff's Claim II.**

Charles W. Faulkner is deceased, and unable to speak for himself in this matter. However, Plaintiff's charge that counsel refused to pay for legal services "they" contracted with National Legal Professional Associates is answered in paragraph 10 of the Affidavit of Charles W. Faulkner dated July 21, 1993. (Exhibit F attached hereto) Although this is an unsigned copy of the affidavit, it was in the Lambros file provided by Colin Ceisel, and it is a responsive affidavit to the affidavit of John Lambros, Docket No. 87. Plaintiff took it upon himself to have his family hire Mr. Robinson of the National Legal Professional Associates, and

EXHIBIT A.

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STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

AFFIDAVIT

Jeffrey L. Orren, being duly sworn upon oath, states and deposes that:

1. I am an attorney, licensed to practice law in the State of Minnesota. My office is at 26 East Exchange Street in the City of Saint Paul, State of Minnesota. I am forty-four years old and I was admitted to the Minnesota Bar in 1986. I am also admitted to practice before the United States District Court for the District of Minnesota.

2. This Affidavit is made as a friend of John Gregory Lambros, and not as an attorney. I am not representing Mr. Lambros in any legal proceedings, including his criminal proceeding. I have known Mr. Lambros since high school at Saint Paul Highland Sr. High. I was involved in a legitimate business (wholesale audio cassette sales -- Rezound Cassette Copying Centers) with Mr. Lambros before his first conviction for drug related crimes. After his conviction, Mr. Lambros sold his interest in our business to me. I had very little contact with Mr. Lambros after we parted ways in 1976 and until his extradition from Brazil in 1991. Mr. Lambros first contacted me personally in early 1992 to seek my assistance.

3. This Affidavit is made to inform the Court of statements made to me by John Lambros that I believe have a direct bearing on his competency to contribute meaningfully to his defense. I firmly believe that Mr. Lambros is not competent to stand trial in any sense of the word.

1-27-94

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4. I had known for years that Mr. Lambros is an intelligent man, and this is born out by his legitimate successes and his ability to get licensed as a stock broker after his first prison term.

5. Immediately upon his first contact with me in 1992, Mr. Lambros informed me that neurological implants had been placed in his body while he was in Brazil, and that he was controlled by the implants by persons unknown to him. He suspected that the implants were put in by Brazilian military or police. He told me that the implants could monitor his speech, hearing and thoughts, and that the persons controlling the implants could make him black out, go into convulsions and even control his speech. The control is exercised by radio telemetry from satellites. The implants draw their power from electricity in Mr. Lambros' skin.

6. I was informed by several third-parties that Mr. Lambros had turned down a plea agreement offering seven years confinement when he knew he was facing a life without parole sentence and would likely be convicted. The reason Mr. Lambros gave for turning down the offer was that voices told him to do it. I asked Mr. Lambros about this on the evening of January 25, 1994, and he confirmed that he turned down the plea agreement, despite the alternative, because voices from satellites told him to do it. It made perfect sense to him. The implants control his mind and body, and he is in no position to make a decision that would not be his.

7. After confirming what I had heard about the plea agreement, I explored the matter further with Mr. Lambros. I

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posed this hypothetical, "If Judge Murphy declared a mistrial and the seven year plea bargain was offered again, and if everyone told you to take the agreement would you accept it?" I was absolutely flabbergasted by his response. He told me that he couldn't accept any plea bargain because the voices tell him not to and because he is not in control of his own thoughts and actions. Even knowing as a fact that he would be convicted and that he would get life without parole, Mr. Lambros would not accept a seven year plea bargain agreement. The reason was the same, he does not control his thoughts and actions, and the voices from the implants tell him "no". And then he elaborated and told me that he would not even accept a no jail time agreement for the same reason. He is not in control of his own actions. He repeated several times that after he has an MRI and the implants are discovered and removed surgically, then he will be able to deal with his criminal problems.

8. I explored the matter even further. I tried to explain that the implants and the criminal proceeding are totally separate matters. I tried to explain that after being sentenced to the hypothetical seven years, he would get into the Bureau of Prisons and he would get the examination he needs, and the implants would be removed. Then he could finish his seven year sentence and get out. If he did not plead guilty, they would just send him away forever, implants or not. He was unable to separate the two issues.

9. I am convinced that Mr. Lambros seriously believes everything he has told me that I related above. He has been

carrying on this claim for well over two years now, without even the slightest break. He has spoken to me as the "third-party" (the person in telemetric control of the implants). He has made decisions that could not possibly be made by a competent person. He did in fact turn down the plea bargain agreement. As an attorney at law, I cannot conceive how Mr. Lambros could possibly be competent to stand trial. He obviously is not capable of contributing to his own defense when he cannot separate two totally separate issues in his mind, and when he takes decisions that are obviously not in his best interest because voices from satellites told him to, whether he has implants or not.

10. Upon penalty of perjury, I declare that all statements above are true, save and except those made upon information or belief, which are true and correct to the best of my knowledge. Further your Affiant sayeth not.

IN WITNESS WHEREOF, I have hereunto placed my hand on this 27th day of January, 19 94.

Jeffrey L. Orren

Subscribed and sworn to before me by Jeffrey L. Orren, personally known to me, on this 27th day of January, 19 94.

DEBORAH PETERSON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
My Commission Expires Mar. 25, 1999

Notary Public

January 16, 2001

John Gregory Lambros
Reg. No. 00436-124
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Attorney Gregory J. Stemmoe
BRIGGS & MORGAN
2400 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402

RE: LAMBROS vs. FAULKNER, et al.

Dear Greg:

Two (2) **STATE SUPREME COURT** decisions as to PUBLIC DEFENDERS IMMUNITY that are favorable to us:

1. **ILLINOIS**: Illinois's new Public and Appellate Defender Immunity Act **CANNOT BE APPLIED RETROACTIVELY** to block a **MALPRACTICE CLAIM AGAINST A PUBLIC DEFENDER** and his supervisors, a majority of the Illinois Supreme Court ruled **December 1, 2000. En route to this conclusion, the MAJORITY MADE CLEAR THAT, APART FROM THE STATUTE, PUBLIC DEFENDERS DO NOT ENJOY SOVEREIGN IMMUNITY FROM MALPRACTICE ACTIONS.** See, JOHNSON vs. HALLORAN, Ill., No. 89594, 12/1/00.

Attached is a copy of the above review IN BRIEF from the CRIMINAL LAW REPORTER, Vol. 68, No. 11, page 240. (12/13/00)

2. **CALIFORNIA**: The California Supreme Court ruled December 18, 2000 that **PUBLIC DEFENDERS ARE NOT IMMUNIZED FROM MALPRACTICE LIABILITY** for their trial errors by a statute that protects public employees for acts committed within the exercise of their discretion. The court explained that the judicial abstention for which the **STATE TORT CLAIMS ACT** calls insulates only fundamental or quasi-legislative policy decisions made by state employees and does not protect appointed counsel from liability for their "operational" decisions See, BARNER vs. LEEDS, Cal., No. S070377, 12/18/00, affirming 63 CrL 111).

Attached is a copy of the above review from the CRIMINAL LAW REPORTER, Vol. 68, No. 13, pages 284 and 285. (1/3/01).

I'll write more as to the above in a few days

Thanks,
John G. Lambros

EXHIBIT C.

F.U.V. 64

a petitioner the best chance to present his claims should not result in his unknowingly forfeiting them. (*Rainieri v. United States*, 1st Cir., No. 99-2359, 12/1/00)

The petitioner before the court filed what he called a "Motion for Correction of Sentence and/or New Trial" and claimed to invoke Fed.R.Crim.P. 35 and/or 33. The district court found the cited rules inapplicable and took it upon itself to recharacterize the motion as an application for habeas-type relief under Section 2255. The district court then denied the recharacterized motion on the merits.

The petitioner later filed a petition under Section 2255 to vacate, set aside, or correct his sentence. That petition was dismissed on the ground that it was the petitioner's second Section 2255 petition and he had failed to obtain the authorization required by the AEDPA to proceed with a second or successive habeas petition.

Different Approaches. Judge Bruce M. Selya began by outlining the varied approaches other federal courts of appeals have taken in the post-AEDPA regime to recharacterizing pro se petitions. The Third Circuit held in *United States v. Miller*, 197 F.3d 644, 66 CrL 209 (3d Cir. 1999), corrected 66 CrL 454 (2000), that before a district court can make such a recharacterization, it must warn the prisoner of the possible consequences under the AEDPA and give him the opportunity to withdraw the pleading. The Second Circuit took a similar approach in *Adams v. United States*, 155 F.3d 582, 63 CrL 629 (2d Cir. 1998). On the other hand, in *In re Tolliver*, 97 F.3d 88 (1996), the Fifth Circuit treated a recharacterized petition the same as if the petitioner had originally filed it as a habeas petition.

The First Circuit favored the Second and Third Circuits' approach but crafted a narrower holding. In reversing the dismissal of the petition and remanding for further proceedings, it noted that treating a recharacterized petition the same as a normal habeas petition would yield the perverse result of precluding claims via an effort to have them properly presented. However, it also found fault with the *Miller* court's rule requiring district courts to issue a form notice to petitioners of the effect of recharacterization and to give them the option of a ruling on the motion as filed, accepting recharacterization and its effects, or withdrawing the motion and refiling a new, all-inclusive habeas petition.

The instant court saw no need to impose new protocols on district courts. Putting up extra hoops for district courts to jump through will only discourage recharacterizations that may be in petitioners' best interests, it observed.

The court also pointed out that "second or successive petition" is a term of art that may not necessarily include every subsequent habeas petition. For example, in Stewart v. *Martinez-Villareal*, 523 U.S. 637, 63 CrL 209 (1998), the U.S. Supreme Court refused to count as a "first" petition one that was dismissed as premature. Following similar reasoning, the First Circuit held that a pro se pleading that was neither denominated as a habeas petition nor substantially equivalent to a habeas petition cannot function as a "first" petition merely because a district court, without giving the petitioner notice and an opportunity to be heard or obtaining the petitioner's informed consent, spontaneously recharacterized it as a habeas petition.

Because the petitioner's original filing was not denominated a habeas petition, he was entitled to have it decided as he framed it, the court said. The district court could not, without the petitioner's informed consent, recharacterize it as a "first" habeas petition. The district court must therefore deal with the current petition as a "first," rather than a "second or successive" petition.

Full text at http://pub.bna.com/cl/992359.pdf

In Brief

Attorneys—[redacted]
Immunity

Illinois's new Public and Appellate Defender Immunity Act [redacted] to block a malpractice claim against a public defender and his supervisors, a majority of the Illinois Supreme Court ruled Dec. 1. En route to this conclusion, the majority made clear that, [redacted]
The plaintiff in this case was convicted of a sex offense but was later exonerated by DNA testing. He brought a malpractice action complaining of the way his trial counsel handled lab tests indicating that body fluids taken from the complainant and her clothing did not come from the plaintiff. An intermediate appellate court ruled that state- or county-employed lawyers who breach the duty to apply normal skill and care when representing their clients are not entitled to rely on the doctrine of sovereign immunity, reasoning that their professional duties to their clients do not result solely as a result of their government employment. In an opinion by Chief Justice Moses W. Harrison II, [redacted] cited [redacted] immunity [redacted]. On the contrary, the [redacted] for [redacted] ing [redacted]. The new immunity act, 745 Ill.Comp.Stat. Section 19/1 (June 30, 2000), which provides that [redacted] able "for any [redacted] in which the plaintiff [redacted] professional malpractice [redacted] misconduct," is of no help to the defendants here, the majority continued. The plaintiff's claim "vested" before the new law took effect and became a "constitutionally protected property interest" that could not be abrogated "without offending plaintiff's due process rights," the majority said. In a concurring opinion, Justice Michael A. Bilandic, joined by Justices Charles Freeman and Mary Ann G. McMorrow, reached the same result as the majority by [redacted] analysis set forth in *Lo[redacted]* U.S. 24 (1994). *Johnson* [redacted]

Capital Punishment—Establishment Clause—Cruel and Unusual Punishment

Religious comments in the legislative history of Texas's death penalty statutes, Tex. Penal Code 19.03 and

CRL ISSN 0011-1341

EXHIBIT C.

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The plaintiff then brought suit against the troopers under Section 1983, seeking as damages compensation for the expenses—bail-bond costs, attorneys' fees, and travel expenses—he incurred during the criminal prosecution. The district court held he could not recover those expenses.

Tort Law Perspective. Judge Robert E. Cowen began the majority's analysis by seeking analogies in the common law of torts. The relief that the plaintiff seeks—a return of costs incurred in defending against a prosecution—was available at common law only in a suit for malicious prosecution, the majority noted. However, it pointed out, a plaintiff claiming malicious prosecution must be innocent of the offense with which he was charged. This requirement would pose a problem for the plaintiff in this case, the majority observed.

Successful claims of false arrest or false imprisonment, which might plausibly arise from a wrongful arrest, can result in compensation for damages incurred only up until arraignment or the issuing of process, the majority continued. All the damages the plaintiff seeks to recover were incurred later, after the indictment, and would thus be unavailable in an action for false arrest or imprisonment, the majority said.

Finally, the majority entertained the possibility that the case was most analogous to an action for trespass. From that perspective, the problem for the plaintiff is that there is no common-law authority approving of the damages he seeks. The reason for the lack of authority, the majority noted, is that there was no exclusionary rule at common law.

Constitutional Considerations. After its look at common-law analogies, the majority noted the U.S. Supreme Court's teaching in *Carey v. Piphus*, 435 U.S. 247 (1978), that the availability of damages under Section 1983 must be assessed in light of the interests protected by the right that was violated. The Fourth Amendment protects against invasions of privacy, not against the discovery of evidence of crime, the majority declared. Given *Carey*'s instruction that liability should be assessed in terms of the risks that are constitutionally relevant risks, "damages for an unlawful search should not extend to post-indictment legal process, for the damages incurred in that process are too unrelated to the Fourth Amendment's privacy concerns," the majority concluded. The Second Circuit reached a similar conclusion in *Townes v. New York*, N.Y., 176 F.3d 138, 65 CrL 179 (2d Cir. 1999), the majority observed.

The majority found further support for its conclusion in numerous rulings by the U.S. Supreme Court limiting the reach of the exclusionary rule. The usual rationale for such holdings is that whatever benefit excluding evidence in particular kinds of proceedings might have in terms of deterring Fourth Amendment violations is outweighed by the harm to the truth-seeking function of those proceedings. The majority acknowledged that there might be significant deterrent value in holding law enforcement officers financially liable for defense costs attributable to unconstitutional searches and seizures. On the other hand, it said, the magnitude of liability that could result would often have little to do with the seriousness of the Fourth Amendment violation.

The scheme of liability envisioned by the plaintiff is inconsistent with the principle that the gravity of a Fourth Amendment violation is gauged by the degree of the privacy invasion, not by the probative value of the evidence uncovered, the majority suggested. As an example, the majority posited a situation in which the opening of a wallet during a lawful frisk revealed evidence of massive wrongdoing and led to lengthy and expensive criminal prosecutions. If it was eventually determined that the opening of the wallet was unjustified, the officer would face "vast liability" even though the invasion of privacy was not especially serious. "[G]iven the social importance of police enforcement," the majority concluded, "we think it is irresponsible to impose potential liability out of proportion to the errors committed."

In a concurring opinion, Judge Richard L. Nygaard offered a different basis for reaching the same result. Applying a causation analysis, Nygaard would have held that the magistrate's decision to issue a warrant for the search of the plaintiff's aircraft broke the chain of causation between the illegal detention and the plaintiff's subsequent legal costs.

Full text at http://pub.bna.com/cl/003084.htm

Attorneys

California Tort Immunity Statute Does Not Insulate Public Defenders

Statute does not reach "operational" decisions made by appointed counsel.

The California Supreme Court ruled Dec. 18 that public defenders are not immunized from malpractice liability for their trial errors by a statute that protects public employees for acts committed within the exercise of their discretion. The court explained that the judicial abstention for which the state tort claims act calls insulates only fundamental or quasi-legislative policy decisions made by state employees and does not protect appointed counsel from liability for their "operational" decisions. (*Barnes v. Leeds*, Cal., No. S070377, 12/18/00, affirming 63 CrL 111)

The case began when two men, one of them wielding a gun, robbed a California bank. The armed robber was wearing lighter colored clothes than his accomplice. After reviewing the bank's surveillance camera photographs, a police informer identified the plaintiff as the gunman. Two employees of the bank agreed with the identification. The plaintiff was arrested and charged with robbery. The court appointed the county public defender's office to represent the plaintiff.

The file received by the attorney assigned to defend the plaintiff included a Federal Bureau of Investigation memo stating that an FBI informer had identified the bank robber who wore light colored clothing as a different man. The attorney later testified that she assumed the FBI memo revealed no new information and that it simply named the plaintiff's unarmed accomplice. She did not file a motion to disclose the identity of the informer.

Although the plaintiff continued to insist that he was innocent, three bank employees identified him as the gun-wielding robber. He was found guilty and sentenced to 16 years' incarceration.

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When a prosecutor informed the defense attorney that there were actually two confidential informers and that the FBI informer had identified the other man as the gunman, the attorney delivered this information to the plaintiff's appellate counsel. That attorney then filed a petition for habeas corpus. After listening to testimony from FBI agents who refused to disclose the confidential informer's identity, the trial court dismissed the criminal action against the plaintiff. Shortly thereafter, the FBI arrested the other man, who admitted participating in the robbery for which the plaintiff had been convicted. The plaintiff was then found factually innocent of the robbery.

The plaintiff sued defense counsel for malpractice, claiming that she negligently failed to investigate the case. The attorney filed for summary judgment, arguing among other things that she was immune from liability under Cal. Gov't Code Section 820.2, which shields public employees from liability for discretionary acts.

The trial court granted summary judgment for the attorney, but the court of appeal reversed. It did not address the question of whether the attorney's alleged negligence involved discretionary acts under the statute. Instead, it said that the legislature had not phrased the immunity statute with sufficient clarity to justify upending the general rule that renders lawyers responsible for acts of legal malpractice. Therefore, the court of appeal held, the immunity statute did not apply at all.

Right Result, Wrong Reason. The state high court affirmed but for a different reason. The appellate court, Chief Justice Ronald M. George said, erred when it concluded that the immunity statute was not worded clearly enough to apply to publicly appointed counsel. The legislature clearly has created immunity for injuries caused by acts or omissions of a public employee who is exercising "discretion" within the meaning of the statute, the court said. The problem for the attorney in this case, the court continued, was that the acts for which she is being sued were not discretionary as that term is used in the statute.

The court pointed out that under the statute, immunity for discretionary acts is reserved to those areas involving fundamental quasi-legislative policy-making. In the past, the court said, "we have distinguished between the employee's operational and policy decisions."

The court conceded that prior to this case it had not specifically decided whether a public employee charged with a professional duty of care, such as a publicly employed attorney or health care professional, makes policy—as opposed to operational—judgments when discharging duties to the client.

The court observed that in a series of health care professional cases it ruled that a public employee's initial decision whether to provide services to an individual might involve the exercise of discretion pursuant to Section 820.2. It added, however, "that once the employee undertakes to render such services, he or she is not immune for the negligent performance of professional duties that do not amount to policy or planning decisions."

It may be, the court acknowledged, that the initial determination whether to provide representation to a certain class of individuals or particular defendant is a sensitive policy decision that should be immunized from judicial review, so as to avoid affecting the public defender's decisionmaking or planning process. Furthermore, a deputy public defender's actual representation of a client requires the exercise of considerable skill and judgment. Even so, such representation generally does not involve discretionary acts within the meaning of Section 820.2 since it does not implicate fundamental policy or planning decisions, the court said.

"Instead," the court noted, "such services consist of operational duties that merely implement the initial decision to provide representation and are incident to the normal functions of the office of the public defender."

Same Standard for All Attorneys. The attorney advanced various policy arguments for making decisions by deputy public defenders immune. She urged that unlike private counsel, deputy public defenders may not choose their clients and, indeed, sometimes must provide representation over the client's objection. This circumstance, she asserted, increases the likelihood of conflict between attorney and client and the risk of malpractice actions. The attorney maintained that permitting liability for malpractice in this context would chill a public defender's zealous representation and would not serve the best interest of his or her client.

The court agreed that public defenders undoubtedly face difficulties and challenges not encountered by most private counsel. Nevertheless, it held that there are countervailing policies supporting a contrary view.

Deputy public defenders and private attorneys owe the same duty of care to their clients, the court said. Therefore, denying criminal defendants a remedy for malpractice simply because they are indigent and represented by a public employee could be seen as unfair. Furthermore, the court predicted that subjecting deputy public defenders to civil liability for negligence would not add measurably to their pre-existing duty to act competently.

If there are policy reasons for immunizing public defenders from liability, the court said, the law should be changed by the legislature, not the court.

Full text at http://pub.bna.com/cl/s070377.pdf

In Brief

Aliens—Illegal Presence—Intent

The offense of being illegally in this country after having been deported, 8 USC 1326, has as an element a general intent to re-enter the country, the U.S. Court of Appeals for the Fifth Circuit held Dec. 21. In prior decisions, *United States v. Ortegon-Uvalde*, 179 F.3d 956 (5th Cir. 1999), and *United States v. Trevino-Martinez*, 86 F.3d 65 (5th Cir. 1996), the court has held that the statute does not require specific intent. The court, speaking through Judge Jerry E. Smith, now held that "§ 1326 is a general intent offense." Most other federal courts of appeals agree but have differed as to what implications this conclusion has for indictments. The court in this case decided that it is enough if the indictment "fairly import[s]" that the defendant's re-entry was voluntary. (*United States v. Guzman-Ocampo*, 5th Cir., No. 99-20968, 12/21/00)

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Boycott Brazil

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The Torture and Electronic Mind Control of U.S. Citizen John Gregory Lambros, a Native of Minnesota

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Motion to Vacate ALL JUDGMENTS AND ORDERS of Judge Robert G. Renner

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$265,000.00 DEA drug enforcement grant to eradicate cultivated marijuana plants. The activists effectively overturned the council's earlier 5-4 vote approving the grant. Under the Hawaii County Charter, officials must pay their expenses to fight IMPEACHMENT PETITIONS. Worried about that prospect, before voting narrowly to receive the DEA grant, the council added language calling for some of the grant to be used to provide "IMPEACHMENT INSURANCE." THEY COULDN'T FIND ANY INSURERS, AND WITHOUT THE INSURANCE, THE GRANT WENT UNSPENT. This story, "Hawaii Inches Forward on Medical Marijuana, Rejects DEA Eradication Funds," may be accessed within the Drug Reform Coordination Network (DRCNet.org) past issues at: www.drcnet.org/wol/158.html#hawaiiaction

IMPEACHMENT OF PUBLIC OFFICERS AND EMPLOYEES: I am attaching pages 657, 658, and 659 from the AMERICAN JURISPRUDENCE 2d, 63C, PUBLIC OFFICERS AND EMPLOYEES, Sections 218 thru 222, which offers an excellent overview on the impeachment of public officers and employees in the United States, as of 1997. **CLICK HERE** to view these pages in **PDF format.**
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LEGAL DOCUMENTS AND RELATED MATERIALS

THIS IS THE CIVIL RACKETEERING (RICO) AND NEGLIGENCE SUIT FILED BY JOHN GREGORY LAMBROS AGAINST HIS CORRUPT COURT-APPOINTED ATTORNEY THAT PROVES LAMBROS IS INNOCENT OF ALL CHARGES AND WAS TORTURED AND FORCED IMPLANTED WITH BRAIN CONTROL IMPLANTS IN BRAZIL. JOHN GREGORY LAMBROS vs CHARLES W. FAULKNER, sued as Estate/Will/Business Insurance of Deceased Attorney Charles W. Faulkner, Sheila Regan Faulkner, Faulkner & Faulkner, and John & Jane Does, Civil Number 98-1621 (DSD/JMM), United States District Court, District of Minnesota.

DOCKET SHEET- LAMBROS vs. FAULKNER, et al., CIVIL NUMBER 98-1621. This docket sheet was downloaded from PACER Service Center, PO Box 780549, San Antonio, Texas 78278-0549. Telephone number (800) 676-6756, E-mail: pacer@saorsd.uscourts.gov on the following date: April 27, 2000

DOCKET SHEET- UNITED STATES vs. JOHN GREGORY LAMBROS,et al., U.S. District Court for the District of Minnesota, **CRIMINAL** FILE NUMBER CR-4-89-82(15). This is the criminal docket sheet that is being used as to the above CIVIL ACTION against Attorney Charles Faulkner, et al., therefore all filings within this docket sheet are EXHIBITS and EVIDENCE as to RICO violations and negligence against Attorney Faulkner et al. by John Gregory Lambros. This document is 18 total pages in length. **YOUR MUST HAVE ADOBE ACROBAT READER INSTALLED ON YOUR COMPUTER TO VIEW AND PRINT THIS DOCUMENT THE FREE ADOBE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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August 4, 1999 REPORT AND RECOMMENDATION by U.S. Magistrate Judge John M. Mason, in LAMBROS vs.

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FAULKNER, that offers an excellent overview of the facts and procedural history in this case. Judge Mason states, "For the reasons set forth above, it is recommended that Defendant's Motion to Dismiss or for summary judgment [Docket No. 47] be DENIED as presented.

November 15, 1999, ORDER by United States District Court Judge David S. Doty, in LAMBROS vs. FAULKNER, that ADOPTS the August 4, 1999 REPORT AND RECOMMENDATION by Magistrate Judge Mason after de novo review of the file and record by dismissal of defendants motion to dismiss or for summary judgment.

October 31, 2000, REPORT AND RECOMMENDATION by United States Magistrate Judge John M. Mason, in LAMBROS vs. FAULKNER. Please note that Magistrate Mason has not stated the complete facts within his finding of facts on page two (2), where he states LAMBROS was sentenced to a term of at least 360 months in jail. The report should state LAMBROS was sentenced to a MANDATORY LIFE SENTENCE WITHOUT PAROLE that was vacated by the Eighth Circuit Court of Appeals. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). Lambros' was then resentenced to thirty (30) years as per Article 75 of the Brazilian Criminal Code, which limits the maximum prison sentence to thirty (30) years in Brazil. See, STATE OF WASHINGTON vs. MARTIN SHAW PANG, 940 P.2d 1293 (Wash. 1997). The REPORT AND RECOMMENDATION is 15 pages with an APPENDIX of 2 pages. Total of 17 pages. (Judge Mason states on page 14, "There is no evidence that Plaintiff ever would have been offered a plea agreement which included an arrangement for the **REMOVAL OF BRAIN CONTROL IMPLANTS**.")

February 13, 2001, (Filed February 14, 2001) ORDER by United States District Court Judge David S. Doty, in LAMBROS vs. FAULKNER. Please note that Judge Doty adopts the October 31, 2000 REPORT & RECOMMENDATION and affirms the conclusion that the state court would likely extend its grant of immunity to FAULKNER in this action. Also the Court stated, "plaintiff has adduced no evidence upon which a rational fact-finder could conclude that defense counsel's conduct in any way prejudiced plaintiff's defense or that defendant's coerced witnesses to give false testimony in plaintiff's criminal case." With all respect to Judge Doty, Lambros believes that Judge Doty is currently experiencing alzheimer's and/ or has misplaced some of the above documents in this action. After reading this ORDER please go to LAMBROS' February 23, 2001, RULE 59(e) that responds to Judge Doty's theory in this ORDER. Thank you. This ORDER is a total of five (5) pages.

The Civil RICO suit against Charles W. Faulkner was initially started by giving NOTICE of ACT ION by a COMMERCIAL LIEN filed by Lambros. So as to assist the reader of this site in the theory used by Lambros, he is requesting that you review the following article by Alfred Adask, "COMMERCIAL LIEN STRATEGY, A PRESIDENTIAL OPINION." This article appeared in the AntiShyster Magazine, Volume 3, No. 1, Jan./Feb. 1993.

June 15, 1998 initial filing of Lambros' DECLARATORY JUDGMENT and/or COMPLAINT in LAMBROS vs. FAULKNER, Civil No. 98-1621. This document includes the one page CERTIFICATE OF SERVICE. EXHIBITS NOT INCLUDED.

June 15, 1998 REQUEST FOR ADMISSIONS FROM DEFENDANT SHEILA REGAN FAULKNER, in LAMBROS vs. FAULKNER, Civil No. 98-1621.

July 20, 1998 MOTION TO SUPPLEMENT THIS DECLARATORY JUDGMENT ACTION/COMPLAINT PURSUANT TO FRCP 15 (a), in LAMBROS vs. FAULKNER, Civil No. 98-1621. EXHIBITS NOT INCLUDED.

July 28, 1998 REQUEST FOR ADMISSIONS FROM: LAW OFFICE MANAGEMENT INC., SUITE 500, 701 FOURTH AVENUE SOUTH, MINNEAPOLIS, MINNESOTA 55415, in LAMBROS vs. FAULKNER, Civil No. 98-1621.

July 28, 1998 REQUEST FOR ADMISSIONS FROM: LARRY PEEBLES, c/o BURNETT REALITY, 13608 - 80TH CIRCLE, MAPLE GROVE, MINNESOTA 55369, in LAMBROS vs. FAULKNER, Civil No. 98-1621.

August 13, 1998 REQUEST FOR ADMISSIONS FROM: THE PARVUS COMPANY, 8403 COLESVILLE ROAD, SUITE 610, SILVER SPRINGS, MARYLAND 20910, in LAMBROS vs. FAULKNER, Civil No. 98-1621.

August 20, 1998 SECOND MOTION TO SUPPLEMENT THIS DECLARATORY JUDGMENT ACTION/ COMPLAINT PURSUANT TO FRCP 15 (a), in LAMBROS vs. FAULKNER, Civil No. 98-1621. PARTIAL EXHIBITS INCLUDED.

August 22, 1998 REQUEST FOR ADMISSIONS FROM: CYNTHIA COLLETT, PRESIDENT OF COLLETT ENTERPRISES, 6708 NORTH MONROE, SPOKANE, WASHINGTON 99208, in LAMBROS vs. FAULKNER, Civil No 98-1621.

August 24, 1998 REQUEST FOR ADMISSIONS FROM: RICHARD STARK, PRESIDENT OF SmartAds AND STARK COMMUNICATIONS, 6094 PERIMETER LAKES DRIVE, DUBLIN, OHIO 43016, in LAMBROS vs. FAULKNER, Civil No. 98-1621.

September 7, 1998 REQUEST FOR ADMISSIONS FROM: SEITLIN & COMPANY, and Officers/Directors Richard Johnson, Stephen M. Jackman, and Barry Ladis, Suite 200, 2001 NW 107th Avenue, Miami, Florida 33172, (A Kidnap, ransom & Insurance Company), in LAMBROS vs. FAULKNER, Civil No. 98-1621. Five (5 pages in length).

September 15, 1998 and September 17, 1998, MOTION BY PLAINTIFF FOR SUBSTITUTION OF PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES W. FAULKNER FOR DECEASED DEFENDANT CHARLES W. FAULKNER, [F.R.C.P. Rule 25 (a) (1)] (two (2) pages) and PLAINTIFF'S AFFIDAVIT IN OPPOSITION TO DEFENDANT'S ANSWER. (Eleven (11) pages), both documents served on September 18, 1998, in LAMBROS vs. FAULKNER, Civil No. 98-1621. Five (5 pages in length).

October 26, 1998 MOTION TO COMPEL DEFENDANT ATTORNEY SHEILA REGAN FAULKNER TO ANSWER FIRST SET OF WRITTEN INTERROGATORIES PROPOUNDED UNDER RULES 34(b), 37(a), and 69 (a), FRCP, FOR ORDER TO COMPEL, (four (4) pages. Attached to this document is copy of Lambros' September 1, 1998, PLAINTIFF LAMBROS' FIRST SET OF INTERROGATORIES PROPOUNDED TO DEFENDANT ATTORNEY SHEILA REGAN FAULKNER. (Fifteen (15) pages), both documents served on October 27, 1998, in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total pages twenty (20).

November 4, 1998 PLAINTIFF'S MOTION TO ALTER THE PLEADINGS IN THIS MATTER AS PER UNITED STATES MAGISTRATE JUDGE JOHN M. MASON'S ORDER, DATED OCTOBER 15, 1998, in LAMBROS vs. FAULKNER, Civil No. 98-1621. Twenty five (25) pages in length.

November 5, 1998 MOTION BY PLAINTIFF FOR SUBSTITUTION OF PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES W. FAULKNER FOR DECEASED DEFENDANT CHARLES W. FAULKNER, [F.R.C.P. RULE 25 (a) (1)], in LAMBROS vs. FAULKNER, Civil No. 98-1621. Four (4) pages total including Certificate of Service page.

November 27, 1998, Attorney Donna Rae Johnson's letter to the Clerk of the Court with copy to Lambros with the following enclosures, (1) DEFENDANT'S MOTION TO AMEND ORDER OF 10/15/98, dated November 13, 1998; (2) Attorney Donna Rae Johnson's letter to Lambros, dated November 13, 1998; (3) Attorney Donna Rae Johnson's letter to Magistrate Judge John M. Mason, dated November 13, 1998; (4) Attorney Donna Rae Johnson's MEMORANDUM IN SUPPORT OF MOTION TO AMEND ORDER DATED 10/15/98, dated November 25, 1998, in LAMBROS vs. FAULKNER, Civil No. 98-1621. Thirteen (13) total pages.

December 14, 1998, letter from Attorney Donna Rae Johnson to the Clerk of the Court and Lambros with copy of the following motions attached; (1) DEFENDANT'S MOTION TO DISMISS ET AL, dated December 14, 1998, two (2) pages; (2) MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTIONS AND IN SUPPORT OF DEFENDANTS MOTIONS, dated December 12, 1998, nine (9) pages; (3) AFFIDAVIT OF SHEILA REGAN FAULKNER, dated December 14, 1998, four (4) pages; 4) DEFENDANT SHEILA REGAN FAULKNER'S RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, dated December 14, 1998, nine (9) pages; (5) DEFENDANT SHEILA REGAN FAULKNER'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS, dated December 14, 1998, ten (10) pages; in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total document pages within combined set of documents is 35 pages.

January 5, 1999, REQUEST FOR ADMISSIONS FROM: JUDGE BALTASAR GARZON, National Court in Madrid, Spain, Audiencia National, Garcia Gutierrez, #1, Madrid, Spain 28004. Five (5) total pages without exhibits.

January 2, 1999, PLAINTIFF LAMBROS' RESPONSE TO THE FOLLOWING DOCUMENTS: 1.) December 12, 1998, Memorandum in Opposition to Plaintiff's Motions and in Support of Defendant's Motions; 2.) December 14, 1998, Defendant's motion to dismiss et al.; 3.) December 14, 198 Affidavit of Sheila Regan Faulkner; 4.) December 14, 1998, Defendant Sheila Regan Faulkner's Response to Plaintiff's Request for Admissions; 5.) December 14, 1998 Defendant Sheila Regan Faulkner's Response to Plaintiff's First Set of Interrogatories. Served on January 5, 1999, in LAMBROS vs FAULKNER, Civil No. 98-1621. Total page fourteen (14) including Certificate of Service and NO EXHIBITS.

January 8, 1999, Plaintiff Lambros' letter to Judge Mason and Attorney Donna Rae Johnson as to an overview of Title 18 U.S.C.A. 201(c)(2), in LAMBROS vs FAULKNER, Civil No. 98-1621. Total of two (2) pages.

January 26, 1999, ORDER and MEMORANDUM by Judge Mason in LAMBROS vs. FAULKNER, Civil No. 98-1621 Total of four (4) pages.

January 26, 1999, REPORT AND RECOMMENDATION by Judge Mason in LAMBROS vs. FAULKNER, Civil No 98-1621. Total of two (2) pages.

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February 17, 1999, Plaintiff Lambros' MOTION TO AMEND in LAMBROS vs. FAULKNER, Civil No. 98-1621. Served on February 19, 1999. Total of five (5) pages including CERTIFICATE OF SERVICE.

February 17, 1999, Plaintiff Lambros' AMENDED COMPLAINT in LAMBROS vs. FAULKNER, Civil No. 98-1621. Served on February 19, 1999. Total of twenty seven (27) pages. NO EXHIBITS SCANNED.

March 26, 1999, ORDER by Judge Mason in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total of three (3) pages

May 3, 1999, Plaintiff Lambros' letter to Attorney Donna Rae Johnson and Attorney Donna Deborah Ellis as to Defendant Faulkner's INSURER'S DUTY TO DEFEND, in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total of two (2) pages.

May 11, 1999, Plaintiff Lambros' MOTION FOR EXTENSION OF TIME (one page) and PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT, MEMORANDUM IN SUPPORT AND REQUESTED ORDER DATED APRIL 26, 1999, (23 pages), in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total of twenty-five (25) pages including Certificate of Service. NO EXHIBITS SCANNED.

May 19, 1999, Plaintiff Lambros' "PART II (DELAYED FILING AS PER MOTION FOR EXTENSION OF TIME) PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT, MEMORANDUM IN SUPPORT AND REQUESTED ORDER DATED APRIL 26, 1999, (23 pages), in LAMBROS vs. FAULKNER, Civil No. 98-1621. (Pages 24 thru 43). Total of twenty-one (21) pages including Certificate of Service page. NO EXHIBITS SCANNED.

August 13, 1999, Plaintiff Lambros' motion "PLAINTIFF'S OBJECTIONS TO U.S. MAGISTRATE JUDGE MASON'S AUGUST 4, 1999, REPORT AND RECOMMENDATIONS," in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total of four (4) pages including Certificate of Service page.

September 4, 1999, Plaintiff Lambros' motion "PLAINTIFF LAMBROS' REQUEST FOR SANCTIONS AGAINST DEFENDANTS ATTORNEYS UNDER A COMBINATION OF RULE 11 AND SECTION 1927," in LAMBROS vs. FAULKNER, Civil No. 98-1621. Total of eleven (11) pages including Certificate of Service page. NO EXHIBITS SCANNED.

November 19, 1999, and November 20, 1999, PLAINTIFF LAMBROS' OBJECTION TO THE ORDER OF U.S. DISTRICT COURT JUDGE DAVID S. DOTY, DATED NOVEMBER 15, 1999, AS TO PLAINTIFF'S MOTION FOR SANCTIONS AGAINST DEFENDANTS' ATTORNEYS UNDER FEDERAL RULE OF CIVIL PROCEDURE 11 AND 28 U.S.C. 1927 BEING DENIED. Total of one (1) page. Also, SUPPLEMENTAL INFORMATION AS TO PLAINTIFF LAMBROS' REQUEST FOR SANCTIONS AGAINST DEFENDANTS ATTORNEYS UNDER A COMBINATION OF RULE 11 AND SECTION 1927. Total of four (4) pages. Combined total of both documents with CERTIFICATE OF SERVICE is six (6) pages. NO EXHIBITS SCANNED.

November 23, 1999, PLAINTIFF'S REQUEST TO RESUME DISCOVERY AND/OR OTHER PRETRIAL ACTIVITIES. Total of two (2) pages including CERTIFICATE OF SERVICE.

December 11, 1999, PLAINTIFF'S MOTION REQUESTING COURT TO COMPEL DEFENDANTS TO DISCLOSE NAMES AND ADDRESSES OF ALL INSURANCE COMPANIES THAT MAY HAVE LIABILITY FOR CLAIMS WITHIN THIS ACTION, SO PLAINTIFF MAY FILE ATTACHMENT'S ON INSURANCE CONTRACTS-FEDERAL RULES OF CIVIL PROCEDURE, RULE 64. Total of three (3) pages including CERTIFICATE OF SERVICE.

December 30, 1999, MOTION FOR APPOINTMENT OF COUNSEL. Total of eight (8) pages including CERTIFICATE OF SERVICE.

January 6, 2000, PLAINTIFF'S REQUEST FOR A RULING BY THIS COURT AS TO THE ADDITION OF NEW DEFENDANTS WITHIN THIS ACTION DUE TO AFFIDAVITS AND EXHIBITS INTRODUCED BY DEFENDANTS ON AUGUST 30, 1999, SO AS TO PRESERVE PLAINTIFF'S DUE PROCESS RIGHTS UNDER RES JUDICATA AND COLLATERAL ESTOPPEL IN THIS ACTION. Total of eight (8) pages including CERTIFICATE OF SERVICE. NO EXHIBITS SCANNED.

January 20, 2000, PLAINTIFF'S RESPONSE TO COURT'S ORDER DATED DECEMBER 22, 1999, REGARDING DISCOVERY AND EXPERT WITNESSES, SO COURT MAY ISSUE A PRETRIAL SCHEDULING ORDER AS PER RULE 26(A) (2) (A) AND (B). Total of twenty one (21) pages including CERTIFICATE OF SERVICE. NO EXHIBITS SCANNED.

March 1, 2000, NOTICE OF APPEARANCE by Attorney Gregory J. Stearnes to represent John G. Lambros in LAMBROS vs. FAULKNER, et. al, Civil No. 98-1621. Total of one (1) page.

March 15, 2000, ORDER FOR PRETRIAL CONFERENCE by U.S Magistrate Judge John M. Mason. Total of two (2) page.

March 16, 2000, Lambros' letter to Attorney Stegmier (two (2) pages) and three attachments, (a) February 1, 2000, Plaintiff Lambros' RESPONSE TO DEFENDANTS' SECOND MOTION FOR JUDGEMENT ON THE PLEADINGS OR SUMMARY JUDGEMENT, AND MEMORANDUM IN SUPPORT. Both dated January 19, 2000, (19 pages in length); (b) February 1, 2000, LEGAL CASES to support Lambros' right to effective assistance of counsel at plea bargaining in correctly advising Lambros of potential maximum sentence, (4 pages in length); (c) March 1, 2000, "PLAINTIFF LAMBROS REQUESTS LEAVE OF THE COURT TO AMEND THIS PLEADING TO ADD NEW CLAIM THAT RELATES BACK TO ORIGINAL COMPLAINT," Federal Rules of Civil Procedure, Rule 15(a), (5 pages in length). Total of 30 pages within all documents.

March 29, 2000, RULE 26(F) REPORT submitted to the Court by all attorneys in this action as to April 5, 2000 PRETRIAL CONFERENCE. Total of 7 pages.

April 5, 2000, ORDER by United States Magistrate Judge John M. Mason. Total of two (2) pages.

June 30, 2000, DEFENDANTS' (Faulkners') COMPREHENSIVE MOTION TO DISMISS OR FOR SUMMARY JUDGMENT. Total two (2) pages.

June 30, 2000, DEFENDANTS' (Faulkners') MEMORANDUM IN SUPPORT OF COMPREHENSIVE MOTION TO DISMISS OR FOR SUMMARY JUDGMENT. Total of twenty five (25) pages.

June 29, 2000, AFFIDAVIT OF ATTORNEY JOSEPH S. FRIEDBERG, 250 Second Avenue South, Suite 205, Minneapolis, Minnesota 55401. Attorney FRIEDBERG's AFFIDAVIT was submitted with Defendant FAULKNER's June 30, 2000, MOTION and MEMORANDUM in support of their request for dismissal and/or summary judgement. Please note that Attorney FRIEDBERG states that he is familiar with applicable standards for competency of criminal defense lawyers and is of the opinion Attorney FAULKNER's representation DID NOT fall below an objective standard of reasonableness for counsel in a criminal case. Lambros can only wonder how many times Attorney FRIEDBERG has MISINFORMED his criminal clients of the INCORRECT criminal sentence they could receive?!?! Please refer to LAMBROS' May 11, 1999, motion, "PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGEMENT, MEMORANDUM IN SUPPORT AND REQUESTED ORDER DATED APRIL 26, 1999," pages 14, 15, 16, and 17, and YOU decide if you would hire Attorney Friedberg to represent you in a criminal or civil case. FRIEDBERG's AFFIDAVIT is a total of three (3) pages.
Also see **CLAIM 17** within the August 3, 2000, AFFIDAVIT OF JOHN GREGORY LAMBROS, paragraph 52 thru 60, pages 15 thru 17, where CHARLES FAULKNER ALLOWED the Court to offer jury instructions that DID NOT require proof of the ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE that was part of the alleged transactions. The amount and/or quantity of a controlled substance is an ESSENTIAL ELEMENT of every drug offense and must be established beyond a REASONABLE DOUBT by the jury.

August 15, 2000, introduction letter from Briggs and Morgan to the Clerk of the Court as to the filing of the following motions, two (2) pages; August 15, 2000, PLAINTIFF'S MOTION FOR APPOINTMENT OF A LEGAL EXPERT, two (2) pages; August 15, 2000, PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' COMPREHENSIVE MOTION TO DISMISS OR FOR SUMMARY JUDGMENT, twenty-nine, (29) pages, 33 total pages.

August 3, 2000, AFFIDAVIT OF JOHN GREGORY LAMBROS, seventeen (17) pages, NO EXHIBITS SCANNED.; August 7, 2000, AFFIDAVIT NUMBER TWO (2) OF JOHN GREGORY LAMBROS AS TO CORRECTIONS WITHIN AFFIDAVIT OF JOHN GREGORY LAMBROS, DATED AUGUST 3, 2000, two (2) pages. Both the August 3, 2000 AFFIDAVITS were included with the August 15, 2000 filings by Briggs and Morgan to the Clerk of Court, 19 Total pages.

August 30, 2000, Defendant Faulkner's attorney's letter to the Clerk of the Court as to the filing of "DEFENDANTS' REPLY MEMORANDUM TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS OR SUMMARY JUDGEMENT, Total of one (1) page. The attached (undated) "DEFENDANTS' REPLY MEMORANDUM TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS OR SUMMARY JUDGEMENT, Total of ten (10) pages. Both documents are a total of (11) pages.

August 25, 2000, DEFENDANTS [Faulkner] MEMORANDUM IN OPPOSITION TO PLAINTIFF'S REQUEST FOR APPOINTMENT OF A LEGAL EXPERT, Total of five (5) pages. Please note that the document is not dated and I did not receive a certificate of service with this document.

November 22, 2000, MEMORANDUM IN SUPPORT OF PLAINTIFFS' OBJECTIONS TO MAGISTRATE JUDGE MASON'S REPORT AND RECOMMENDATION [dated October 31, 2000]. This document is being offered in PDF format

due to the attachments which include letters from Lambros to Attorney Stenmoe dated November 4, 6, 7, 8, 9, 11, 13, and 15, 2000. Total pages including attachments are fifty-five (55). Please note that the 55 pages within this total document are hand numbered in the lower right hand corner of each page. Of interest is the fact that Faulkner committed fraud when he told Lambros that he could receive a seven (7) year sentence, as it was not within the plea agreement. See, U.S. vs. COLEMAN, 895 F.2d 501, 504-07 (8th Cir. 1990)(Notice must appear within plea agreement) Also Lambros did not provide assistance to the government, thus he is not a RAT and/or SNITCH. For some reason the Court does not want to give Lambros his Brazilian Constitutional Rights as required by the U.S.-BRAZIL Extradition Treaty. **YOU MUST HAVE ACROBAT READER INSTALLED ON YOUR COMPUTER TO VIEW AND PRINT THIS DOCUMENT. THE FREE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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January 8, 2001, LAMBROS' LETTER TO JUDGE DAVID S. DOTY. Lambros' letter to Judge Doty offers an overview as to the June 26, 2000, United States Supreme Court decision in **APPRENDI vs NEW JERSEY**, 120 S.Ct 2348 and its effects as to LAMBROS' unconstitutional sentence. The facts and law within this letter supports the worst case scenario of LAMBROS receiving a sentence of 46 to 57 months of incarceration. Total of six (6) pages including the Certificate of Service. NO EXHIBITS SCANNED.

February 23, 2001, (Filed March 01, 2001) MOTION TO ALTER OR AMEND JUDGMENT AND/OR HAVE JUDGMENT VACATED UNDER FEDERAL RULES OF CIVIL PROCEDURE **RULE 59(e)**. This document requests Judge Doty to amend and/or vacate his February 13, 2001 ORDER. Please note that LAMBROS raises four excellent issues with the most important being that the Minnesota Supreme Court decision CANNOT be applied retroactively. See, OZIBUBAK vs. MOTT, 503 N.W.2d 771, was decided on August 6, 1993 and LAMBROS' trial ended on January 15, 1993. Therefore, FAULKNER did not have immunity. Also an excellent overview on the new U.S. Supreme Court case GLOVER vs. U.S., No. 99-8576 (2001) which proves that PREJUDICE occurs if an attorney's ineffectiveness increases a prisoners time by one day. The issue of CAUSATION is a matter of fact to be decided by a jury, not a judge, is covered in issue four. The motion is a total of eleven (11) pages which includes a one page certificate of service.

March 5, 2001, SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT. This document was prepared by Attorney Stenmoe in support of LAMBROS February 23, 2001, RULE 59(e) MOTION. This motion is a total of two (2) pages.

March 12, 2001, PLAINTIFF'S OBJECTIONS TO ATTORNEY STENMOE'S NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF COUNSEL WITHOUT SUBSTITUTION, DATED MARCH 6, 2001. This document is a total of three (3) pages which includes a one page certificate of service.

March 15, 2001, PLAINTIFF'S MOTION TO ENTER NEWLY DISCOVERED EVIDENCE INTO THIS ACTION, **"CLAIM EIGHTEEN (18)"** Dated: March 15, 2001. This document offers proof as to the 1976 indictment that prejudiced Lambros during his sentencing that FAULKNER either covered-up and/or was ineffective in not researching. Please note that the motion clearly proves that the following government officials violated Title 18 U.S.C. Section 1001, in offering false, fictitious, or fraudulent statements or representations to the GRAND JURY: (a) Deputy United States Marshall James L. Propotnick; (b) Special Agent Donald E. Nelson of the Federal Drug Enforcement Administration; (c) James P. Braseth of the Federal Drug Enforcement Administration; and (d) Deputy United States Marshall Leon A. Cheney. This motion is a total of seven (7) pages which includes a one page certificate of service. EXHIBITS NOT SCANNED.

UNITED STATES PAROLE COMMISSION--BREACH OF U.S.-BRAZIL EXTRADITION TREATY.

May 8, 2000, served May 10, 2000, Appeal in the United States Court of Appeals for the Tenth Circuit in JOHN GREGORY LAMBROS vs. WARDEN J.W. BOOKER and the UNITED STATES PAROLE COMMISSION, Case No. 00-3118, on Appeal from the U.S. District Court for the District of Kansas, Case No. 98-3148-RDR. This is Lambros' appeal as to the United States Parole Commission **NOT** honoring and breaking the law as to the Extradition Treaty between the U.S. and BRAZIL in forcing Lambros to serve a 5,357 day sentence that he was **NOT** extradited on nor required to serve, as per the rulings by the Brazilian Supreme Court on April 30, 1992, (see Exhibit A). This document is 56 total pages in length. **YOU MUST HAVE ADOBE ACROBAT READER INSTALLED ON YOUR COMPUTER TO VIEW AND PRINT THIS DOCUMENT. THE FREE ADOBE ACROBAT READER MAY BE DOWNLOADED FROM ADOBE SYSTEMS BY CLICKING HERE.**

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June 13, 2000, ORDER AND JUDGMENT from the United States Court of Appeals for the Tenth Circuit in JOHN GREGORY LAMBROS vs. J.W. BOOKER; U.S. BOARD OF PAROLE, U.S. PAROLE COMMISSION, Case number 00-3118. The appeals court allowed the lower court's ruling to stand. Therefore, LAMBROS is now serving a CONSECUTIVE 5,357 day sentence that he WAS

EXHIBIT D.

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