October 02, 2003

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
USA

Web site: www.brazilboycott.org

CLERK OF THE DISTRICT COURT
708 Warren E. Burger Federal Building
316 North Robert Street
St. Paul, Minnesota 55101
U.S. CERTIFIED MAIL NO. 7003-1010-0000-5112-2218

RE: LAMBROS vs. USA, Civil No. 99-28(DSD)
Criminal No. 4-89-82(5) (DSD)

Dear Clerk:

Attached for **FILING** in the above-entitled action is one (1) original and one (1) copy of:

1. MOTION OFFERING CLARIFICATION OF FACTS, RECORD, AND EVIDENCE PERTINENT TO EXISTING ISSUES IN THIS ACTION AS TO THE INTEGRITY OF THE PROCEEDING THAT RESULTED IN THE DISTRICT COURT'S JUDGMENT ON FEBRUARY 10, 1997, AT **RESENTENCING** OF JOHN G. LAMBROS BY THE HONORABLE ROBERT G. RENNER. **DATED: SEPTEMBER 30, 2003.**

I have mailed copy of the above-entitled motion to the U.S. Attorney's Office.

Thanking you in advance for your continued assistance in this matter.

Sincerely,

John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I declare under the penalty of perjury that a true and correct copy of the above listed document/motion was mailed within a stamped addressed envelope from the USP Leavenworth inmate mailroom on this **02, DAY OF OCTOBER, 2003,** to:

1. U.S. ATTORNEY'S OFFICE, District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

John Gregory Lambros, Pro Se

1.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS,	*	**CIVIL NO. 99-28 (DSD)**
Petitioner,	*	Criminal No. 4-89-82(5) (DSD)
vs.	*	
UNITED STATES OF AMERICA,	*	
Respondent/Defendant.	*	**AFFIDAVIT FORM**

MOTION OFFERING CLARIFICATION OF FACTS, RECORD, AND EVIDENCE PERTINENT TO EXISTING ISSUES IN THIS ACTION AS TO THE INTEGRITY OF THE PROCEEDING THAT RESULTED IN THE DISTRICT COURT'S JUDGMENT ON FEBRUARY 10, 1997, AT RESENTENCING OF JOHN G. LAMBROS BY THE HONORABLE ROBERT G. RENNER.

COMES NOW, Petitioner JOHN GREGORY LAMBROS, Pro Se, (hereinafter Movant) offering clarification of facts, records, and evidence pertinent to existing issues in this action. Movant requests this Court to follow the Eighth Circuit's longstanding practice in construing pro se pleadings liberally. See, BRACKEN vs. DORMIRE, 247 F.3d 699, 702-03 (8th Cir. 2001); JONES vs. JERRISON, 20 F.3d 849, 853 (8th Cir. 1994).

MOVANT LAMBROS RESTATES AND CLARIFIES THE FOLLOWING FACTS IN THIS ACTION:

1. Movant filed his motion to vacate all judgments and orders by Judge Renner pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure for violations of Title 28 U.S.C.A. §455 on or about April 13, 2001, in this above-entitled action.

2. On October 19, 2001, the government filed "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS."

3. On November 13, 2001, Movant Lambros filed, "PETITIONER LAMBROS'

RESPONSE TO OCTOBER 19, 2001, 'OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS.' Dated November 9, 2001.

4. Movant Lambros believes facts, evidence, and the record needs to be clarified as to his **NOVEMBER 13, 2001, RESPONSE** as fully described within paragraph three (3) above, so as to not undermine the public's confidence in the judicial process. See, LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855, 860 (1988); POTASHNICK vs. PORT CITY CONST. CO., 609 F.2d 1101, 1102, Head Note 4 (5th Cir. 1980)("A judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street; use of the word **"MIGHT"** in statute was intended to indicate that disqualification should follow if reasonable man, were he to know all the circumstances, would harbor doubts about judge's impartiality. 28 USCA §455(a).")

CLARIFICATION OF FACTS, RECORD, AND EVIDENCE IN MOVANT LAMBROS' NOVEMBER 09, 2001 RESPONSE: (Filed November 13, 2001)

5. **EXHIBIT A:** Certificate of Service and pages 12 and 13 of Movant Lambros' November 9, 2001, RESPONSE in this action.

6. **EXHIBIT B:** Exhibit B contains the following pages from Movant Lambros' EXHIBIT D referenced within page 12, paragraph 30 of **EXHIBIT A:**

a. Certificate of Service to Clerk, U.S. Court of Appeals for the Eighth Circuit, Dated June 21, 2001;

b. Pages 16 thru 26.

SUPPLEMENTAL RECORDS TO SUPPORT EXHIBIT A AND B:

7. Exhibit A and B, as described within paragraphs five (5) and six (6) of this page presents facts, records, and evidence as to **JUDGE ROBERT RENNER'S IMPARTIALITY** towards Movant Lambros at **RESENTENCING ON FEBRUARY 10, 1997,** specifically, not sentencing Movant Lambros for a conspiracy to distribute **MARIJUANA** in Count I.

8. The maximum sentence for a conspiracy to distribute **MARIJUANA** on **FEBRUARY 27, 1988**, the ending date of the conspiracy in this action, was **TEN (10) YEARS**, due to prior criminal history. Judge Robert Renner sentenced Movant Lambros to **THIRTY (30) YEARS AND EIGHT (8) YEARS SUPERVISED RELEASE** for an alleged **COCAINE CONSPIRACY** on February 10, 1997.

9. Since **1990**, the Eighth Circuit Court of Appeals has held and Judge Renner was required to enforce and uphold the law stating, "A single conspiracy may have as its objective the distribution of two (2) different drugs without rendering it duplicitous." See, U.S. vs. OWENS, 904 F.2d 411, 414-15 **(8th Cir. 1990)**(When the jury returns a **GENERAL VERDICT** to a charge that a conspiratorial agreement covered multiple drugs, the defendant **MUST BE SENTENCED AS IF HE DISTRIBUTED ONLY THE DRUG CARRYING THE LOWER PENALTY**). Also see, U.S. vs. NICHOLSON, 231 F.3d 445, 454-455 **(8th Cir. 2000)(REHEARING DENIED)**("... the evidence at trial did authorize the jury to conclude that he conspired to distribute cocaine and marijuana for resale .... For purposes of the general verdict, it does not matter which substance the jury believed Mr. Jenkins possessed. ... where a jury renders a general verdict that may rest on any of several alternative factual findings, the court 'should sentence the defendant on the alternative that yields a lower sentence.') Id. at 454.

10. **EXHIBIT C:** Exhibit C contains the cover-page and pages 2, 3, 4, 16, 17, 18, 19, 38, 44, 45, and 64 of the **FEBRUARY 10, 1997, RESENTENCING** in USA vs. JOHN G. LAMBROS, CR.-4-89-82 (05), before the **HONORABLE ROBERT G. RENNER.**

11. The following facts within the record of the February 10, 1997, **RESENTENCING** state: (Exhibit C)

a. Page 4: "The limited remand to this court requires it to impose sentence consistent with the version of 21 United States Code, Section 841(b)(1)(a)(2), in effect as of **FEBRUARY 27th, 1988**, the ending date of the **COCAINE CONSPIRACY** in which the defendant participated." (emphasis added).

b. Page 16: [John G. Lambros addressing Judge Renner] "Also, I

would like to bring up regarding - - this is very important - - in regard to Count I, Your Honor, I'm raising the argument right now that I was denied due process of law and effective assistance of counsel when at [Page 17] sentencing a GENERAL VERDICT - - I repeat, a GENERAL VERDICT - - was rendered by the jury which did not specify which substantive offense of a MULTI OBJECT CONSPIRACY was committed. Therefore, to carry my argument further, Your Honor, under the 841 penalty facet, the LEAST - - THE LEAST PENALTY OF THE OFFENSE IS WHAT I'M SUBJECT TO. My - - am I flowing correctly for you, sir? I'm sorry I'm stuttering and rambling a little bit. [emphasis added]. THE COURT: You are doing fine. THE DEFENDANT [Lambros]: Pardon me? THE COURT: You're doing fine. I am not asking you any questions because I UNDERSTAND FROM YOUR SUBMISSIONS WHAT IT IS YOU ARE SAYING AND I DON'T WANT TO USE UP ANY OF YOUR TIME." [emphasis added]

c. Page 17: [John G. Lambros] "Okay. So, on that particular situation what I am saying is that [Page 18] downstairs, I received them yesterday, where a jury just gave a blanket verdict, GENERAL VERDICT, so they didn't say which count or which element of the CONSPIRACY I was guilty of. And that's not correct. So, I have a brief that was done for somebody else out of Leavenworth that's excellent, and it gets into the MULTIPLE OBJECT CONSPIRACY. And - - let's see, Instead of charging movement with a separate offense on each of the offenses following the jury verdict, the government failed to request a special verdict form identifying which offense movement conspired to commit. THEY DIDN'T DO THIS IN THIS CASE. . . . . AND THERE IS CRIMES IN THERE THAT CARRY MAYBE FIVE YEARS OR TEN YEARS. I haven't had a chance to research this. How do we attack this?" [emphasis added]

d. Page 19: [John G. Lambros] "I'm saying that a GENERAL VERDICT was rendered and that this court doesn't have any idea on what phase of 841, if it's 841 or other counts, that it's sentencing me on today. So, I don't see how I can be sentenced until we have an EVIDENTIARY HEARING AS TO WHAT EXACTLY I WAS FOUND GUILTY OF BY THE JURY." [emphasis added]

e. Page 38: [John G. Lambros] "Remember, I had purchased three

or four hundred pounds of **MARIJUANA** from Mr. Pebbles. **I NEVER PURCHASED COCAINE."** [emphasis added]

f. Page 64: [John G. Lambros] "Okay. And regarding the **GENERAL VERDICT, ON WHICH ELEMENT - -** THE COURT: That's a matter of argument that you will raise with the Court of Appeals if there is an appeal." [emphasis added]

12. Of interest, Movant Lambros' attorney Colia Ceisel **REFUSED TO RAISE THE ARGUMENT WHEN SHE APPEALED MOVANT LAMBROS RESENTENCING,** "Whether Judge Robert Renner errored in sentencing Movant Lambros to a **COCAINE CONSPIRACY**, as the jury rendered a **GENERAL VERDICT** that covered both **MARIJUANA AND COCAINE CONSPIRACY.**

13. **EXHIBIT D:** Exhibit D contains the cover-page (page 825) and pages 868, 869, 886, and 951 of the **TRIAL TRANSCRIPTS** from USA vs. JOHN G. LAMBROS, CR-4-89-82 (05), on January 15, 1993, before the Honorable Judge Diana E. Murphy, in this action. The following facts and statements are presented within same:

a. Page 868: THE COURT: [Judge Murphy] "And in these closing arguments, the lawyers have more leeway than in the opening statement. They can **REVIEW THE EVIDENCE WITH YOU AND PRESENT EACH SIDE'S THEORY OF THE CASE.**" (emphasis added)

b. Page 869: THE COURT: [Judge Murphy] "**THE BURDEN OF PROOF IS ON THE GOVERNMENT**, as I've told you, and that controls the order of the closing argument." (emphasis added)

c. Page 886: [Final Argument of the government, Douglas R. Peterson, Assistant U.S. Attorney] "But Mr. Lambros says, well, there's this trade slip, Defense Exhibit 1 and Defense Exhibit 2. First of all, keep in mind your common sense again. Lawrence Pebbles is a careful guy. He's dealing cocaine to John Lambros. **EVEN ACCEPT LAMBROS' TESTIMONY THAT HE'S DEALING MARIJUANA. HE HAS A DRUG RELATIONSHIP WITH JOHN LAMBROS.**" (emphasis added)

d. Page 951: THE COURT: [Judge Murphy] "Upon retiring to the jury room, you will select one of your number to act as your foreperson. . . . . A form of verdict has been prepared for your use, and you'll be taking it with you to the jury room. . . . . "We, the jury, find the defendant [John G. Lambros]" - - blank; under the blank is "Guilty" or "Not Guilty" - - "as charged in Count I of the indictment"; . . ." [GENERAL JURY VERDICT FORM]

14. EXHIBIT E: Exhibit E contains the cover-page (Page 1) and pages 22, 26, and 27 of the January 27, 1994, SENTENCING TRANSCRIPTS before the Honorable Judge Diana E. Murphy in USA vs. JOHN G. LAMBROS, CR-4-89-82 (05), in this action. The following facts and statements are present within same:

a. Page 22: "DEFENDANT LAMBROS: Well, he's a snitch. And page No. 3, Mr. Pebbles has stated to us that HE ADMITS SELLING MARIJUANA TO ME. He made the statement to an outside individual, and I believe Mr. Faulkner was made aware of that information. And I'd like it to go on record that Mr. Pebbles admits selling MARIJUANA to me, and I wanted him subpoenaed to state that. As you know, I'm here for allegedly Mr. Pebbles selling me cocaine. IT WAS FOR MARIJUANA, as I've stated before, and he made this statement. And Mr. Faulkner was made aware of the fact." (emphasis added)

b. Page 26: DEFENDANT LAMBROS: "Number 26, "When testifying, Lambros also repeatedly denied dealing cocaine and contradicted much of the incriminating evidence offered by Lawrence Pebbles," and so forth. Then, again, Mr. Pebbles is willing to be subpoenaed - - in fact, ASKED TO BE SUBPOENAED - - and I asked Mr. Faulkner to testify to the fact that he RECEIVED A FAX FROM ATTORNEY JEFF ORR, [Attorney Jeff Orren, St. Paul, Minnesota] STATING THAT MR. PEBBLES WOULD BE AVAILABLE FOR SUBPOENA FOR SENTENCING, STATING THAT HE DID MARIJUANA BUSINESS, jewelry, and other liquidation business. . . . Well, this is my objection. I want him to verify it.

c. Page 27: "DEFENDANT LAMBROS: IT SAYS MARIJUANA. I want him to - -

d. Page 27: "THE COURT: **I JUST WILL ASSUME, FOR PURPOSES OF THE RECORD, THAT ALL OF THAT IS TRUE, FOR PURPOSES OF WHAT WE HAVE TO DO TODAY.** (emphasis added)

15. **EXHIBIT F:** Exhibit F. contains John Gregory Lambros, **MARCH 4, 1997,** overview of his **TRIAL TRANSCRIPT** in this action and **REFERENCE TO THE WORD "MARIJUANA".** This overview was mailed to Movant Lambros' Attorney, **COLIA CEISEL,** to assist in the raising of the **GENERAL JURY VERDICT ISSUE.** Please recall that Judge Renner instructed Attorney Colia Ceisel to raise the issue on appeal. See, **EXHIBIT C,** PAGE 64 of the February 10, 1997, **RESENTENCING. ATTORNEY COLIA CEISEL REFUSED TO RAISE THE ISSUE.** Exhibit F is six (6) pages in length.

16. **EXHIBIT G:** Exhibit G. contains John Gregory Lambros' letter to Attorney Gregory J. Stenmoe, Briggs & Morgan, Minneapolis, Minnesota, dated **July 7, 2000,** as to the **MAXIMUM SENTENCE JOHN G. LAMBROS COULD RECEIVE ON COUNT I IS FIVE (5) YEARS FOR MARIJUANA.** This letter offers trial and grand jury transcript evidence as to **MARIJUANA.** Exhibit G. is a total of three (3) pages in length.

17. **EXHIBIT H:** Exhibit H. contains copy of the **1988 Edition of the Federal Criminal Code and Rules,** West Publishing Company, **Title 21, U.S.C. Section 841.** Judge Renner stated at **RESENTENCING** of Movant Lambros on February 10, 1997, "The limited remand to this court requires it to impose sentence consistent with the version of 21 United States Code, Section 841(b)(1)(a)(2), **IN EFFECT AS TO FEBRUARY 27, 1988, THE ENDING DATE OF THE COCAINE CONSPIRACY IN WHICH THE DEFENDANT PARTICIPATED."** See, Exhibit C, page 4.

LEGAL OVERVIEW AS TO THE ABOVE GENERAL VERDICT CLAIM: Count I

18. Movant Lambros was charged and convicted of a conspiracy to distribute multiple drugs: cocaine and **MARIJUANA,** within Count I of this action. See, May 17, 1989, Grand Jury Transcript of John J. Boulger, Page 33, Line 16, "And in particular, in January of 1988 as **REFERENCED IN OVERT ACT PARAGRAPH NUMBER 21, ... THEY MET ON THREE SEPARATE OCCASIONS AND DISCUSSED MARIJUANA TRANSACTIONS ...**"

19. The jury returned a general jury verdict; it was not asked to make specific findings regarding the type and quantity of drugs involved in the Count One (1) conspiracy.

20. Movant Lambros contends that under the law, Judge Renner at **RESENTENCING**, was precluded from imposing a sentence for narcotics conspiracy greater than the ten (10) year maximum that could have been imposed for a conspiracy to distribute what was, for sentencing purposes, the least serious drug involved in the charged conspiracy: **MARIJUANA**.

21. This rule was first adopted in multiple-drug conspiracy case by the Second Circuit in **1984**, U.S. vs. OROZCO-PRADA, 732 F.2d 1076 (2nd Cir. 1984) and by the time Movant Lambros was sentenced on **JANUARY 27, 1994 and RESENTENCED by Judge Renner on February 10, 1997**, it had been accepted by the **EIGHTH CIRCUIT COURT OF APPEALS** in **1990**: U.S. vs. OWENS, 904 F.2d 411, 414-15 (8th Cir. 1990).

22. The general verdict caused a "problem of ascertaining juror intent," making it impossible to say that the jury had actually found that the defendant had participated in a conspiracy to distribute the drug as to which a more-serious sentence applied. OROZCO-PRADA, at 1084. The Tenth Circuit held that this issue was "plain error," reviewable on appeal even if not raised at trial. See, NEWMAN vs. U.S., 817 F.2d 635, 637, n.3 (10th Cir. 1987).

23. Movant Lambros' court appointed counsel refused to raise this issue on appeal after Movant's request.

24. In **1998**, the U.S. Supreme Court affirmed the above law in EDWARDS vs. U.S., 523 U.S. 511 (1998, "[o]f course, petitioners' statutory and constitutional claims would make a difference if it were possible to argue, say, that the sentence imposed exceeded the maximum that the statutes permit for a cocaine-only conspiracy." Id. at 515. The Supreme Court's comments, and its citation of OROZCO-PRADA, see EDWARDS, 523 U.S. at 515, appear to denote approval of the OROZCO-PRADA rule in cases like Movant Lambros' in which unlike in EDWARDS, the sentence imposed in fact exceeded the statutory maximum for the lowest-level narcotic charged in the indictment, **MARIJUANA**. That is, in fact, the way that EDWARDS has been read in the Circuits.

See, e.g., U.S. vs. ALLEN, 302 F.3d 1260, 1269 (11th Cir. 2002); U.S. vs. ZILLGITT, 286 F.3d 128, 135-36 (2nd Cir. 2002). In fact, as of this writing, every Circuit in the U.S. agrees with Movant Lambros.

25. The courts' error, **JUDGE RENNER**, is not subject to harmless error analysis. See, e.g., ZILLGITT, 286 F.3d at 139-40. If harmless error analysis does not apply to GENERAL VERDICT violations, then Movant Lambros had a solid GENERAL JURY issue in this action. He received a thirty (30) year sentence, whereas the maximum sentence applicable to a conspiracy to distribute **MARIJUANA** is ten (10) years.

CONCLUSION

26. Movant Lambros provided **JUDGE ROBERT RENNER** with properly-supported facts that entitled Lambros to be sentenced to a maximum of ten (10) years on the Count One (1) conspiracy on **FEBRUARY 10, 1997.** (Marijuana conspiracy)

27. On February 10, 1997, Judge Renner during **RESENTENCING** converted all of Movant Lambros' motions to a **SECTION 2255 MOTION.** Therefore, a hearing was required on a section 2255 motion when the movant asserts properly-supported facts that, if proven, would entitle him to relief. See, BRUCE vs. U.S., 256 F.3d 592, 597 (7th Cir. 2001); see also, RODRIGUEZ vs. U.S., 286 F.3d 972, 986 (7th Cir. 2002) (hearing is required on section 2255 motion, "when factual disputes exist" that cannot be determined on the paper record before the Court).

28. The above facts define circumstances that mandated the disqualification of **JUDGE RENNER** for violations of Title 28 U.S.C.A. §455, due to the fact Judge Renner, as U.S. Attorney Renner, adjudicated three (3) cases against Movant Lambros in 1975 and 1976. See, LILJEBERG vs. HEALTH SERVICES CORP., 100 L. Ed.2d 855 (1988); U.S. vs. ARNPRIESTER, 37 F.3d 466 (9th Cir. 1994).

29. All declarations within this document and exhibits attached are

under the penalty of perjury, as per Title 28 USC §1746.

EXECUTED ON: SEPTEMBER 30, 2003

Respectfully submitted,

John Gregory Lambros, Pro Se
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
USA

WEB SITE: www.brazilboycott.org

CERTIFICATE OF SERVICE

LAMBROS vs. U.S.A., CIVIL NO. 99-CV-28 (Judge Rosenbaum): Criminal No. 4-89-CR-82(5)

FOR FILING:

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

a. PETITIONER LAMBROS' RESPONSE TO OCTOBER 19, 2001, "OPPOSITION OF THE UNITED STATES TO PETITIONER'S MOTION TO VACATE ALL JUDGMENTS AND ORDERS." **Dated: November 9, 2001.**

b. **Exhibit packages: A; B; C; and D. All Dated: November 9, 2001.**

was served on the following this **13th** day of **November**, 2001, via U.S. Mail through the U.S. Penitentiary Leavenworth mailroom/legal mailbox, to:

1. CLERK OF THE COURT
   District of Minnesota
   U.S. Federal Courthouse
   316 North Robert Street
   St. Paul, Minnesota 55101
   U.S. CERTIFIED MAIL NO. 7001-0320-0003-3596-6636 - RETURN RECEIPT REQUESTED

One (1) original and one (1) copy for FILING.

2. U.S. Attorney's Office
   District of Minnesota
   U.S. Federal Courthouse, Suite 600
   300 South 4th Street
   Minneapolis, Minnesota 55415

3. INTERNET RELEASE TO ALL "BOYCOTT BRAZIL" SUPPORTERS AND HUMAN RIGHTS GROUPS GLOBALLY FOR REVIEW, COMMENT, AND RELEASE. **Web site: www.brazilboycott.org**

4. Lambros family members.

John Gregory Lambros
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000 USA

Web site: www.brazilboycott.org

EXHIBIT A.

12.

OK File

of the INDICTMENT. See, U.S. vs. LAMBROS, 564 F.2d 26, 27 (8th Cir. 1977). The September 14, 1976, **INDICTMENT** did not contain the word **INTENT** within Count Seven (7), nor the word **POSSESSION** within Counts 4, 5, and 7, as to violations of Title 21, U.S.C., Section 841(a)(1) and 846. See, **EXHIBIT C** (Pages 19 thru 23). The words **INTENT** and **POSSESSION** are **NECESSARY ELEMENTS TO SUSTAIN A CONVICTION.**

U.S. DISTRICT COURT JUDGE RENNER RESENTENCED MOVANT LAMBROS ON FEBRUARY 10, 1997, ON COCAINE NOT MARIJUANA CHARGES. THE JURY RENDERED A GENERAL VERDICT. JUDGE RENNER SHOULD OF SENTENCED MOVANT LAMBROS TO A MARIJUANA CHARGE.

CRIMINAL INDICTMENT NO. 4-89-82.

28. Movant LAMBROS was resentenced by U.S. Federal Judge Robert Renner on February 10, 1997, on Count One of Criminal Indictment No. 4-89-82 on Cocaine charges when the petit jury did not make a **SPECIAL FINDING** as to the alleged type of drug Movant was convicted of, "MARIJUANA, COCAINE, and/or an unspecified amount of a CONTROLLED SUBSTANCE." Movant LAMBROS admitted to the receipt of MARIJUANA to the petit jury and the court. Therefore, Judge Renner could only sentence Movant LAMBROS to MARIJUANA not COCAINE. See, U.S. vs. NICHOLSON, 231 F.3d 445, 446, 448, 449, 454, and 455 **(8th Cir. 2000)(REHEARING DENIED).** (We held in U.S. vs. NATTIER, that, where a **JURY** renders a **GENERAL VERDICT** that may rest on any of several alternative factual findings, the court "should sentence the defendant on the **ALTERNATIVE THAT YIELDS A LOWER SENTENCING RANGE."** Id. at 454).

29. Movant LAMBROS was resentenced by Judge Renner on February 10, 1997, on Count One of Criminal Indictment No. 4-89-82 to an amount of a controlled substance that was not proved beyond a reasonable doubt by a petit jury.

30. Movant offers supporting evidence in affidavit form as to the legal theory and supporting documents for paragraphs 28 and 29 in **EXHIBIT D.** ("MOTION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE OR

CORRECT SENTENCE UNDER 28 U.S.C. § 2255 BY A PRISONER IN FEDERAL CUSTODY. Dated: June 18, 2001" and "MOVANT'S MEMORANDUM OF FACT AND LAW IN SUPPORT OF (AFFIDAVIT FORM) MOTION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE UNDER 28 U.S.C. § 2255 BY A PRISONER IN FEDERAL CUSTODY. Dated: June 18, 2001.") The legal theory for **PARAGRAPH 28** is offered within pages 16 thru 26 in the June 18, 2001, MEMORANDUM OF FACT AND LAW. The legal theory for **PARAGRAPH 29** is offered within pages 26 thru 30 in the June 18, 2001, MEMORANDUM OF FACT AND LAW.

RETROACTIVE DISQUALIFICATION OF U.S. DISTRICT COURT JUDGE ROBERT G. RENNER UNDER § 455(a).

31. The U.S. Supreme Court held in LILJEBERG vs. HEALTH SERVICES CORP., 100 L.Ed.2d 855 (1988), the following facts as to the **RETROACTIVE** application of Rule 60(b)(6) to apply § 455(a) retroactively:

> a. "Under 28 USCS § 455(a), which disqualifies a federal judge from acting in any proceeding in which the judge's impartiality 'might reasonably be questioned,' **RECUSAL IS REQUIRED** — even though a federal judge lacks actual knowledge of the facts indicating the judge's interest or bias in the case -- if a reasonable person, **KNOWING ALL THE CIRCUMSTANCES**, would expect that the judge would have such actual knowledge, because . . . . (5) to the extent that **§ 455 CAN BE APPLIED RETROACTIVELY**, after a judge has become aware of the disqualifying facts, the judge is not called upon to perform an impossible feat, but to rectify an oversight, and thus to conclude that § 455(a) has been violated." See, LILJEBERG, at 859. (emphasis added)
>
> b. ". . . But to the extent the provision can also, in proper cases, **BE APPLIED RETROACTIVELY**, the judge is not called upon to perform an impossible feat. Rather, he is called upon to rectify an oversight and to take the steps necessary to maintain public confidence in the impartiality of the judiciary. If he concludes that '**HIS IMPARTIALITY MIGHT REASONABLY BE QUESTIONED**,' then he should also find that the statute has been violated. This is certainly not an impossible task. . . . . Accordingly, even though his failure to disqualify himself was the product of a **TEMPORARY LAPSE OF MEMORY**, it was nevertheless a plain violation of the terms of the statute." See, LILJEBERG, at 873. (emphasis added)
>
> c. **DISSENTING SEPARATE OPINION** by Chief Judge REHNQUIST, with whom Justice WHITE and Justice SCALIA join. "Despite this factual determination, reached after a public hearing on the subject, the

June 21, 2001

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

CLERK
U.S. 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 WITH RETURN RECEIPT # 7000-0520-0021-3728-9516

RE: SUCCESSIVE §2255 - CRIMINAL No. 4-89-82, U.S. DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION.

Dear Clerk:

As per my December 12, 2000, letter to you requesting a PRISONER FORM for the filing of a SUCCESSIVE §2255 and your response stating,"We have no form. Other Circuits do - they're out on the internet. Or, just modify the ___?___ form and in district court."

Basically I just copied the format used by private attorney's assisting inmates. Hopefully it will pass.

Anyway, please file the attached original and three copies of my SECOND or SUCCESSIVE §2255 as to APPRENDI vs. NEW JERSEY, 120 S.Ct. 2348 (2000).

Yes I understand that you have not granted RETROACTIVITY but I'm concerned about the one (1) year statute of limitations provision in §2255, that presented a problem in the Second circuit in BAILEY. I understand that you may just file the enclosed and give me a denial **WITHOUT PREJUDICE, THUS PRESERVING MY ISSUE.**

Thanking you in advance for your continued assistance.

Sincerely,

John Gregory Lambros

c:
U.S. Attorney, District of Minnesota
File

15.

EXHIBIT B.

MOVANT'S CONVICTION AND SENTENCES MUST BE VACATED BASED ON THE FOLLOWING VIOLATIONS OF APPRENDI vs. NEW JERSEY, 120 S.Ct. 2348 (2000):

ISSUE ONE (1):

> **THE JURY DID NOT PROVE BEYOND A REASONABLE DOUBT THE TYPE OF DRUGS INVOLVED WITHIN COUNTS 1, 5, 6, AND 8. WHETHER THE DRUG WAS: MARIJUANA, COCAINE, AND/OR UNSPECIFIED AMOUNT OF A "CONTROLLED SUBSTANCE."**

53. Movant will prove to this Court that the **GRAND JURY**, the concurrence of 12 or more jurors, **AGREED UPON THE FACT** that Movant LAMBROS met on at least three (3) separate occasions and discussed **MARIJUANA TRANSACTIONS** as referenced in Count One (1), OVERT ACT PARAGRAPH NUMBER 21 in Movant's indictment. Count One (1), OVERT ACT PARAGRAPH NUMBER 21 states:

> "21. On several occasions in January 1988, LAMBROS met with a confidential informant and discussed LAMBROS' interest in narcotics activites, including LAMBROS' interest in the cocaine business."

See, GAITHER vs. U.S., 413 F.2d 1061, 1066 (1969) ("[F]or this reason, 12 ordinary citizens must agree upon an indictment before a defendant is tried on a felony charge. The content of the charges, as well as the decision to charge at all, is entirely up to the grand jury - subject to its popular veto, as it were. The grand jury's decision not to indict at all, or NOT TO CHARGE THE FACTS ALLEGED BY THE PROSECUTORIAL OFFICIALS, is not subject to review by any other body. The sweeping powers of the grand jury over the terms of the indictment entail very strict limitations upon the power of prosecutor or court to change the indictment found by the jurors, or to prove at trial facts different from those charged in that indictment. Since the grand jury has unreviewable power to refuse indictment, and to alter a proposed indictment, PROOF AT TRIAL OF FACTS DIFFERENT FROM THOSE CHARGED CANNOT GENERALLY BE JUSTIFIED ON THE GROUNDS THAT THE SAME FACTS WERE BEFORE THE GRAND JURY

AND THAT THE JURORS MIGHT OR EVEN SHOULD HAVE CHARGED THEM." GAITHER, 413 F.2d at 1066) (emphasis added).

54. The May 17, 1989, **GRAND JURY TRANSCRIPT**, of testimony by **JOHN J. BOULGER**, Sergeant with the Minneapolis Police and assigned to the Drug Enforcement Administration Task Force, clearly states on page 33 that Movant LAMBROS met on three (3) separate occasions and discussed **MARIJUANA TRANSACTIONS** as to Count 1, Overt Act Paragraph Number 21, stating within the grand jury transcript:

a. Q. Earlier, we had talked about your use of an informant by the name of Donald Hendrickson during the course of this investigation. As I understand it, Mr. Hendrickson had some contact with JOHN LAMBROS, correct?

b. A. He did.

c. Q. And in particular, in January of 1988 as **REFERENCED IN OVERT ACT PARAGRAPH NUMBER 21**, there were some discussions between Don Hendrickson and Mr. LAMBROS concerning drug trafficking, correct?

d. That's correct. They met on three separate occasions and discussed **MARIJUANA TRANSACTIONS** and other drug transactions.

EXHIBIT D: (GRAND JURY TESTIMONY OF JOHN J. BOULGER, May 17, 1989, Pages 1, 13, 14, and 33)

55. Movant's attorney only supplied Movant with the grand jury testimony of JOHN J. BOULGER, 43 pages. Therefore, Movant is unable to offer exhibits to this court as to the alleged information and/or facts offered to the GRAND JURY as to all **MARIJUANA** and cocaine allegations by the government. Movant would appreciate this Court to ORDER the U.S. Attorney in Minnesota to forward copy of all GRAND JURY transcripts within this above-entitled action to Movant.

56. Movant LAMBROS testified at trial that he discussed and purchased **MARIJUANA** from co-defendant LARRY PEBBLES. See, TRIAL TRANSCRIPT, Volume VI, page 755, lines 3 thru 20.

57. During the final argument of U.S. Assistant Attorney DOUGLAS

PETERSON, Peterson states to the jury: "[H]e's dealing cocaine to JOHN LAMBROS. **EVEN ACCEPT LAMBROS' TESTIMONY THAT HE'S DEALING MARIJUANA.** He has a drug relationship with JOHN LAMBROS." See, Volume VII, page 886, lines 15 thru 17. **EXHIBIT E.**

58. EVIDENCE PRESENTED TO THE JURY during Movant LAMBROS' trial which supports the receipt of **MARIJUANA** by Movant may be found on the following pages of the TRIAL TRANSCRIPTS: 140, 141, 516, 529, 532, 533, 557, 755, 758, 761, 766, 769, 771, 794, 803, 804, 805, 844, 856, 857, 862, 863, 864, 867, 886, 910, 911, 922, and 924.

59. Movant LAMBROS offers this Court an **INDEX** of GRAND JURY, TRIAL, and SENTENCING transcript evidence presented as to **MARIJUANA TRANSACTIONS** in this case by offering Movant LAMBROS' July 7, 2000, letter to Attorney Gregory J. Stenmoe, BRIGGS & MORGAN. The letter is a three (3) page letter that offers the exact page and line within Movant's transcript as to **MARIJUANA.** **EXHIBIT F.**

60. Evidence throughout Movant's trial supported convictions for conspiracy to **RECEIVE** a **CONTROLLED SUBSTANCE**, Count One (1), and possession **AS TO RECEIVING** a **CONTROLLED SUBSTANCE**, Counts five (5), six (6), and eight (8). That controlled substance being **MARIJUANA**, as Movant **ADMITTED** during trial. See, U.S. vs. BAKER, 10 F.3d 1374, 1418 (9th Cir. 1993), cert. denied, 130 L.Ed.2d 289 (Defendant in drug distribution case was improperly convicted for distributing four pounds of methamphetamine; evidence showed ONLY that defendant had RECEIVED DRUGS, NOT THAT HE DISTRIBUTED IT, and there was no showing that distribution was in furtherance of any conspiracy); see, U.S. vs. HAROLD, 531 F.2d 704, 705 (5th Cir. 1976)(per curiam) ("To distribute means to DELIVER . . . It does not mean to RECEIVE"); Also see, U.S. vs. ONE 1977 - 36 FOOT CIGARETTE OCEAN RACER, 624 F.Supp. 290, 295 (S.D.Fla. 1985)(**MARIJUANA** is a **"CONTROLLED SUBSTANCE"** for the purpose of Title 21 U.S.C. 801, et seq.)

61. **A GENERAL JURY VERDICT** was given by the petit jury in conspiracy Count One (1). The petit jury **DID NOT** make a **"SPECIAL FINDING"** as to which "OVERT

ACTS" were committed in an effort to accomplish some object of the conspiracy in Count One (1). Therefore, Movant LAMBROS could of been found guilty of: (a) marijuana; (b) cocaine; or (c) controlled substance. (Remember the GRAND JURY agreed upon the fact three (3) **MARIJUANA TRANSACTIONS** occurred in OVERT ACT, paragraph 21 in Count 1).

62. CONSPIRACY IS ITSELF A CRIME: It has been clear since BRAVERMAN vs. U.S., 87 L.Ed. 23 (1942), that the allegation, in a single count of conspiracy, of an agreement to commit several crimes is not duplicitous, **AS CONSPIRACY IS ITSELF THE CRIME** . . . A single conspiracy may have as its objective the distribution of two (2) different drugs without rendering it duplicitous. See, U.S. vs. DALE, 178 F.3d 429, 431 (6th Cir. 1999), quoting U.S. vs. OWENS, 904 F.2d 411, 414-15 (8th Cir. 1990). Also, the DALE court quoted GRIFFIN vs. U.S., 502 U.S. 46, 56-57, 116 L.Ed.2d 371 (1991) ("'When a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, as [defendant's] indictment did, the verdict stands if the evidence is sufficient with respect to any one of the acts charged." . . . Seven of the eight circuits that have directly considered this issue have decided that the PUNISHMENT IMPOSED CANNOT EXCEED THE **SHORTEST** MAXIMUM PENALTY AUTHORIZED IN THE STATUTES CRIMINALIZING THE MULTIPLE OBJECT IF THE PUNISHMENT AUTHORIZED BY THE CONSPIRACY STATUTE DEPENDS ON THE PUNISHMENT PROVIDED FOR THE SUBSTANTIVE OFFENSES WHICH WERE THE OBJECTS OF THE CONSPIRACY. That is the case here. The maximum sentence for conspiring to distribute a controlled substance to be distributed. 21 U.S.C. § 846. Given the facts in this case, the maximum sentence for a conspiracy to distribute **MARIJUANA** is five (5) years, 21 U.S.C. § 841(b)(1)(D), while a conspiracy to distribute crack [cocaine] would yield a forty-year maximum sentence, 21 U.S.C. § 841(b)(1)(B)." Five courts of appeals [OWENS, 8th Cir] have held that when the jury returns a GENERAL VERDICT to a charge that a conspiratorial agreement covered multiple drugs, the defendant **MUST BE SENTENCED AS IF HE DISTRIBUTED ONLY THE DRUG CARRYING THE LOWER PENALTY."** DALE, 178 F.3d at 432.

63. **A GENERAL JURY VERDICT** was given by the petit jury in Counts 5, 6, and 8. The petit jury **DID NOT** make a **"SPECIAL FINDING"** as to the type of drug/controlled substance involved. Therefore, Movant LAMBROS could of been found guilty of: (a) marijuana; (b) cocaine; or (c) controlled substance. The petit jury was allowed to retire with factually inaccurate impression as to which controlled substance(S) were part of Counts 5, 6, and 8. See, DRISCOLL vs. DELO, 71 F.3d 701, 715 (8th Cir. 1995)'(denied effective assistance of counsel because his lawyer allowed the jury to retire with the factually inaccurate impression that the victim's blood was possibly on Driscoll's knife)

64. Movant LAMBROS testified at trial that he was receiving **MARIJUANA** from Larry Pebbles not cocaine.

65. The government **DID NOT** request a **"SPECIAL VERDICT"** as to the **TYPE** of drug/controlled substance involved in Counts 1, 5, 6, or 8. It is the responsibility of the government to request a **"SPECIAL VERDICT"**. See, U.S. vs. BARNES, 158 F.3d 662, 672 (2nd Cir. 1998) ("In OROZCO-PRADA we approved of the suggestion of the D.C. Circuit that it is **"THE GOVERNMENT'S RESPONSIBILITY TO SEEK SPECIAL VERDICTS."** Id. at 1084 (citing BROWN vs. U.S., 299 F.2d 438, 440 n.3 (D.C.Cir.), cert. denied, 8 L.Ed.2d 812 (1962)).

66. The indictment, evidence presented at trial, and jury instructions should be **VIEWED AS A WHOLE**. See, U.S. vs. MURPHY, 109 F.Supp.2d 1059, 1065 (D. Minn. 2000) (Viewing the instructions as a whole, the court concludes that the issue of drug quantity [drug type] was not subjected to a reasonable doubt determination by the jury in defendant's case. Therefore, imposing a sentence under the harsher provisions of § 841(b)(1)(A) was unlawful and defendant's motion as to this claim must be granted.)

67. The **JURY INSTRUCTIONS WHERE CONFUSING** as to the **TYPE OF CONTROLLED SUBSTANCE** involved in Counts 1, 5, 6, and 8. The following statements by Judge Murphy proves same:

a. "Also, the evidence need not prove the actual amount

of the **CONTROLLED SUBSTANCE** that was part of the alleged transaction or the **EXACT AMOUNT** of the **CONTROLLED SUBSTANCE** alleged as possessed by the defendant with the intent to distribute. The government **MUST PROVE** beyond a reasonable doubt, however, that a **MEASURABLE AMOUNT OF THE CONTROLLED SUBSTANCE** was, in fact, knowingly and intentionally possessed by the defendant with the intent to distribute. See, COURT TRANSCRIPTS, Vol. VII, page 935. (emphasis added)

b. To assist you in determing whether there was an agreement to distribute or possess with intent to distribute cocaine, you are advised that the **ELEMENTS** of those drug crimes are: One, that the defendant, at some point during the time charged in the indictment, distributed, or possessed with intent to distribute, a **CONTROLLED SUBSTANCE**; See, COURT TRANSCRIPTS, Vol. VII, page 938 (emphasis added).

c. Section 841(a)(1) of Title 21 USC provides, in part, that it shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a **CONTROLLED SUBSTANCE**. In order to make out the charges in Counts II, III, and IV [Counts 5, 6, & 8], the Government must prove three essential elements beyond a reasonable doubt: One: The defendant John Lambros possessed the **CONTROLLED SUBSTANCE** described; Two: The defendant knew that the substance was a **CONTROLLED SUBSTANCE**; See, COURT TRANSCRIPTS, Vol. VII, pages 942 and 943.

d. It is not necessary for the Government to prove that the defendant knew the precise nature of the **CONTROLLED SUBSTANCE** that was possessed with the intent to distribute. It MUST PROVE beyond a reasonable doubt, however, that the defendant did know that some type of **CONTROLLED SUBSTANCE** was possessed with intent to distribute. See, COURT TRANSCRIPTS, Vol. VII, pages 943 and 944. (emphasis added)

68. The words "**CONTROLLED SUBSTANCE**" was used throughout Movant's trial and **JURY INSTRUCTIONS**. Therefore, viewing the information the jury received during trial and the JURY INSTRUCTIONS as a **WHOLE**, this Movant can only rationally conclude that the jury was subjected to the following **TYPES** of labels as to the

DRUG TYPES Movant could of been found guilty of: (a) **CONTROLLED SUBSTANCE;** (b) **MARIJUANA;** and/or (c) **COCAINE.**

69. **RULE OF LENITY:** The RULE OF LENITY is applicable in this action, as the RULE OF LENITY provides that "where text, structure, and history fail to establish that the Government's position is unambiguously correct, [Courts] apply the RULE OF LENITY and resolve the ambiguity in [the defendant's] favor." See, U.S. vs. GRANDERSON, 511 U.S. 39, 54, 127 L.Ed.2d 611 (1994). AMBIGUITY concerning the ambit of criminal statutes should be resolved in FAVOR OF LENITY, REWIS vs. U.S., 401 U.S. 808, 28 L.Ed.2d 493, 497 (1971), and when choice must be made between two readings of what conduct Congress has made a crime, it is appropriate, BEFORE choosing the harsher alternative, to require that Congress should have spoken in language that is clear and definite, U.S. vs. UNIVERSAL C.I.T. CREDIT CORP., 344 U.S. 218, 97 LEd 260 (1952). Moreover, unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crime. See, U.S. vs. BASS, 404 U.S. 336, 349, 30 L.Ed.2d 488, 497 (1971). Also see, U.S. vs. TRAN, 234 F.3d 798, 800, Head Note 16 (2nd Cir. 2000) ("RULE OF LENITY" **REQUIRES** the sentencing court to **IMPOSE THE LESSER OF TWO (2) PENALTIES WHERE THERE IS AN ACTUAL AMBIGUITY OVER WHICH PENALTY SHOULD APPLY.**)

70. **TITLE 21 U.S.C. § 812 - SCHEDULES OF CONTROLLED SUBSTANCES:** Movant states Section **812(a)** of Title 21 states: "[T]here are established **FIVE (5) SCHEDULES OF CONTROLLED SUBSTANCES**, to be known as **SCHEDULES I, II, III, IV, and V."**

LEGAL CASES TO ASSIST THIS COURT:

71. U.S. vs. NICHOLSON, 231 F.3d 445 **(8th Cir. 2000)(REHEARING DENIED)** This Courts ruling in NICHOLSON and facts in NICHOLSON will assist all parties as Movant LAMBROS' case is identical. Movant will highlight the following points from NICHOLSON: (a) JENKINS challenges his sentence under APPRENDI vs. NEW JERSEY, (Id. at 449); (b) JENKINS convicted of conspiracy to distribute CONTROLLED SUBSTANCE,

21 U.S.C. § 846, and of possessing COCAINE BASE with intent to distribute, 21 U.S.C. § 841. (Id. at 449); (c) . . ., the EVIDENCE AT TRIAL did authorize the JURY TO CONCLUDE that he conspired to distribute COCAINE and MARIJUANA. There was TESTIMONY that he bought COCAINE and MARIJUANA for resale . . . The government introduced numerous tapes of drug-related telephone calls . . . This EVIDENCE would support the INFERENCE that Mr. Jenkins CONSPIRED with these people to distribute drugs. (Id. at 454); (d) There was also SUFFICIENT EVIDENCE to uphold the JURY'S GENERAL VERDICT that Mr. Jenkins violated 21 U.S.C. § 841(a) by possessing a CONTROLLED SUBSTANCE with the intent to distribute . . . For purposes of the GENERAL VERDICT, IT DOES NOT MATTER WHICH SUBSTANCE THE JURY BELIEVED MR. JENKINS POSSESSED. (Id. at 454); (e) We cannot rule out the possibility that the JURY followed this instruction and convicted Mr. Jenkins on a finding of MARIJUANA distribution EVEN THOUGH HIS INDICTMENT ALLEGED COCAINE BASE. (Id. at 454); (f) Mr. Jenkins is entitled to that assumption. We held in U.S. vs. NATTIER, that, where a JURY renders a GENERAL VERDICT that may REST ON ANY OF SEVERAL ALTERNATIVE FACTUAL FINDINGS, the court "should sentence the defendant on the ALTERNATIVE THAT YIELDS A LOWER SENTENCING RANGE." (Id. at 454).

EXHIBIT G: (U.S. vs. NICHOLSON, 231 F.3d 445 (8th Cir. 2000)(REHEARING DENIED) pages 445, 446, 448, 449, 454, and 455))

72. U.S. vs. SHEPPARD, 219 F.3d 766, 768 fn. 2 (8th Cir. 2000) This Court stated, ". . . Thus, to the extent APPRENDI applies, the jury need only be instructed to find, as it did in this case, that a particular TYPE and QUANTITY of controlled substance was involved in the offense." Also, "To convict a defendant of violating 21 U.S.C. §841(a), or of conspiracy to violate §841(a) in violation of 21 U.S.C. §846, "[t]he government is not required to prove that the defendant actually knew the exact nature of the substance with which he was dealing." Id. at 769.; and "[A]t the instruction conference, SHEPPARD argued that JONES required the court to submit the issue of quantity to the jury as an element of the offense. The Court

declined to do so but, at the government's request, did submit a **"SPECIAL FINDING"** dealing with **DRUG TYPE** and **QUANTITY**. Answering this finding in the affirmative, the jury unanimously found beyond a reasonable doubt that more than 500 grams of methamphetamine were involved in SHEPPARD'S offense. Because the indictment had alleged this drug type and quantity, and because the district court made a drug quantity finding at sentencing that was consistent with the jury's **SPECIAL FINDING**, SHEPPARD received all the Fifth and Sixth Amendment protections, that JONES and **APPRENDI** require." Id. at 769.

73. U.S. vs. LOWE, 2000 WL 1768673 (S.D.W.Va. 11/28/2000)(Judge Goodwin) This case addresses an important issue regarding the application of **APPRENDI** to cases involving **MARIJUANA - NAMELY WHAT IS THE CORRECT STATUTORY MAXIMUM PENALTY FOR A DEFENDANT CONVICTED OF DISTRIBUTING MARIJUANA.** The courts have carved out a general rule that, in drug cases where drug quantity is not proved by a jury beyond a reasonable doubt, **APPRENDI** limits the maximum sentence that can be imposed to the lowest default statutory maximum. Under the complex statutory scheme enacted by Congress, a defendant convicted of distributing MARIJUANA can be sentenced under one (1) of five (5) different statutory maximum penalty schemes - ranging from one (1) year to life imprisonment depending on a number of factors; and, as this case shows, it is easy to confuse which of the statutory provisions apply and under what circumstances. Four (4) of the penalty provisions for MARIJUANA convictions are set forth in 21 U.S.C. §841(b)(1) and the fifth is set forth in **§ 841(b)(4).** In general, the penalty range applicable to particular drugs depends on the quantity of the drug attributable to the defendant. The LOWE case is the first case to have considered and analyzed the provisions of **§ 841(b)(4)** - and it held that the default statutory maximum penalty in **MARIJUANA** cases where the jury has not determined the drug quantity by proof beyond a reasonable doubt should be **ONLY ONE (1) YEAR - NOT THE FIVE (5) YEAR MINIMUM SPECIFIED IN THE CATCH-ALL PROVISIONS OF 21 U.S.C. § 841(b)(1)(D).** After considering the parties' briefs on that issue, Judge Goodwin held

that "in light of **APPRENDI**, when a defendant is charged with distribution of **MARIJUANA** without more, the defendant is subject to the statutory maximum penalty of one (1) year of imprisonment pursuant to **§ 841(b)(4)**. To expose a defendant to the increased penalties within **§ 841(b)(1)(D)**, the government must charge in an indictment, submit to a jury, and prove beyond a reasonable doubt that the amount of MARIJUANA distributed was not small or that the **DISTRIBUTION WAS FOR REMUNERATION**." Judge Goodwin also noted that "[d]etermining whether **§ 841(b)(4)** or **§ 841(b)(1)(D)** applies also affects whether the defendant is **CONVICTED OF A MISDEMEANOR OR A FELONY**. As the Fourth Circuit stated in United States vs. WILSON, 284 F.2d 407, 408 (4th Cir. 1960), '[a] fact which distinguishes a violation punishable by imprisonment for not more than one year from a violation punishable by imprisonment for ten years cannot be permitted to rest upon conjecture or surmise.'" The courts conclusion in this case had been suggested by **DICTA** in U.S. vs. HENDERSON, 105 F.Supp.2d 523 (S.D.W.Va. 2000) (which was also written by Judge Goodwin; and is supported by the Fifth Circuit's later decision in U.S. vs. SALAZAR-FLORES, 238 F.3d 672 (5th Cir. 2001). Although the Fifth Circuit did not thoroughly analyze the issue in that case, it clearly implied that **§ 841(b)(4)** is the proper baseline default for **MARIJUANA** cases where the quantity is contested.

74. Title 21 U.S.C. **§ 841(b)(4)** states: "Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of **MARIJUANA** for no remuneration shall be treated as provided in **SECTION 844 OF THIS TITLE AND** section 3607 of Title 18.

75. Title 21 U.S.C. **§ 844** states penalties of not more than one (1) year for first time offenders; not less than 15 days but not more than two (2) years after a prior drug conviction; not less than 90 days but not more than three (3) years after two or more prior drug convictions.

CONCLUSION TO ISSUE ONE (1):

76. The District Court used COCAINE as the type of drug to sentence

Movant on in Counts 1, 5, 6, and 8, when the jury was not requested to prove the actual or exact amount of the controlled substance during jury instructions, nor requested to make a **"SPECIAL FINDING"** as to the **TYPE** of controlled substance by the government or the Court.

77. Evidence presented to the GRAND JURY, PETIT JURY, and the final argument of U.S. Assistant Attorney Douglas Peterson to the jury stating: "[H]e's dealing cocaine to John Lambros. **EVEN ACCEPT LAMBROS' TESTIMONY THAT HE'S DEALING MARIJUANA.** He has a drug relationship with John Lambros." See, Paragraph 57 and EXHIBIT E, allows the inference that Movant LAMBROS purchased **MARIJUANA** from the alleged conspiracy.

78. Movant's Fifth and Sixth Amendment protections where violated as the jury did not make a "SPECIAL FINDING" as to the TYPE of controlled substance involved in Counts 1, 5, 6, and 8. Therefore, Movant's sentence must be vacated.

79. Movant states that Title 21 U.S.C. Section **841(b)(4)** only allows a **STATUTORY MAXIMUM** sentence of not less than 90 days but not more than three (3) years due to Movant's prior convictions. Therefore Movant should be remanded back to the District Court for resentencing under Title 21 U.S.C. **§ 841(b)(4)** on Counts 1, 5, 6, and 8 as to the alleged receipt of **MARIJUANA.**

ISSUE TWO (2):

THE JURY DID NOT PROVE BEYOND A REASONABLE DOUBT THE QUANTITY OF DRUG/CONTROLLED SUBSTANCE INVOLVED WITHIN COUNTS 1, 5, 6, AND 8.

80. The petit jury was instructed by United States District Court Judge Murphy that:

> "[A]lso, the evidence NEED NOT prove the actual amount of the controlled substance that was part of the alleged transaction **OR** the exact amount of the controlled substance alleged as possessed

UNITED STATES FEDERAL COURT

FOR THE DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

-vs- File No. CR.4-89-82(05)

John G. Lambros,

Defendant.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter before the Honorable Robert G. Renner on February 10, 1997 at United States Federal Courthouse, St. Paul, Minnesota, at 10:00 a.m.

APPEARANCES:

Douglas Peterson, Assistant United States Attorney, appeared as counsel on behalf of the Government.

Colia Ceisel, Attorney, appeared as counsel on behalf of the Defendant.

REPORTED BY:

BARBARA J. EGGERTH, R.P.R.

67 Total pages

THE COURT: The Court has before it the matter of the United States of America versus John Gregory Lambros. Present and before the court, representing the government, is Mr. Douglas Peterson. Also present is Colia Ceisel.

MS. CEISEL: It's Ceisel, Your Honor.

THE COURT: And, of course, the defendant, John Gregory Lambros.

Before the court commences with the parties proceeding, I would ask if there is anyone else who should be placed of record at this time, whose name should be placed of record. Mr. Peterson?

MR. PETERSON: Not to my knowledge, Your Honor, no.

MS. CEISEL: Your Honor, Mr. Lambros's parents are also present and he has --

THE COURT: Excuse me. Would you plan on using the microphone when you address the court? I am having trouble hearing you.

MS. CEISEL: Yes, Your Honor. Mr. Lambros's parents are also here, Your

Honor, and he has a motion before the court to allow them to address the court.

THE COURT: I'll take it under advisement. We'll see how things go.

MS. CEISEL: Thank you, Your Honor.

THE COURT: I am ready to commence the court's part of this matter. I would ask that you listen closely and I will tell you that all parties will have an opportunity to make their presentations, although the court intends to limit oral presentations.

Before the court is the matter of the United States versus John Lambros, Criminal Number 4-89-82(05). It is necessary to briefly review the procedural history of this case. The defendant was previously convicted in this court on four counts involving a conspiracy to distribute cocaine. The Honorable Diana Murphy sentenced the defendant to two 120-month terms for Counts 2 and 3, a 360-month term for Count 4, and a term of life imprisonment on Count 1. The defendant appealed. Subsequently, the Eighth Circuit affirmed all convictions, but vacated the life sentence on Count 1 finding that while such a

sentence was permitted under the applicable law, it was not mandatory as the Sentencing Board had believed. The limited remand to this court requires it to impose sentence consistent with the version of 21 United States Code, Section 841 (b) (1) (a) (2), in effect as of February 27th, 1988, the ending date of the cocaine conspiracy in which the defendant participated. Despite the limited nature of these proceedings, the defendant has interposed numerous motions and supporting papers requesting relief from resentencing. Procedurally, these motions are somewhat unorthodox in that they appear to be addressed both towards convictions and sentences for which the defendant is currently incarcerated as well as the conviction for which he is about to be sentenced. The defendant has informally suggested that these motions be considered under Federal Rule of Criminal Procedure 33 as, quote, new trial, end quote, motions. However, such motions would clearly be untimely even if correctly denominated as Rule 33 motions. Alternatively, the court can simply dismiss all of the motions not directly

received it this morning -- this is a supplement to the presentence report. I imagine Mr. Meyer was the one who composed this. He is stating that my statutory penalty for Count 1 is life imprisonment. I disagree with that. I believe, as this court knows, 846 conspiracy, the penalty phase of 846 is the 841. That's the object and the penalty. And under that, within that time frame, I believe the most I could have received was not more than 30 years as was released by National Legal Professional Associates out of Ohio in their paper to the Eighth Circuit. So, that's my position. The most I can be given on the conspiracy count is 30 years, Your Honor, not a life sentence. That's where I disagree with Mr. Meyer and this court. Also, the 841 (b) (1).(a) had a repeat offender provision which called only for a term of imprisonment of not more than 30 years and/or a fine.

Also, I would like to bring up regarding -- this is very important -- in regard to Count 1, Your Honor, I'm raising the argument right now that I was denied due process of law and effective assistance of counsel when at

sentencing a general verdict -- I repeat, a general verdict -- was rendered by the jury which did not specify which substantive offense of a multi object conspiracy was committed. Therefore, to carry my argument further, Your Honor, under the 841 penalty facet, the least -- the least penalty of the offense is what I'm subject to. My -- am I flowing correctly for you, sir? I'm sorry. I'm stuttering and rambling a little bit.

THE COURT: You are doing fine.

THE DEFENDANT: Pardon me?

THE COURT: You're doing fine. I am not asking you any questions because I understand from your submissions what it is you are saying and I don't want to use up any of your time.

THE DEFENDANT: Okay. If you understand what I am saying, we can flow faster.

THE COURT: I think I do.

THE DEFENDANT: Okay. So, on that particular situation what I am saying is that I went through my -- went through the transcripts here and I laid it out just

30.

downstairs, I received them yesterday, where a jury just gave a blanket verdict, general verdict, so they didn't say which count or which element of the conspiracy I was guilty of. And that's not correct. So, I have a brief that was done for somebody else out of Leavenworth that's excellent, and it gets into the multiple object conspiracy. And -- let's see. Instead of charging movement with a separate offense on each of the offenses following the jury verdict, the government failed to request a special verdict form identifying which offense movement conspired to commit. They didn't do this in this case. So, as you are right today going to give me a penalty for which facet of 841? And there is other facets of the conspiracy. As you go through the trial transcripts, Judge Murphy reads the different elements of Conspiracy Number 1. I would be more than happy to share that with you right now, but it doesn't say which one the jury found me guilty of. And there is crimes in there that carry maybe five years or ten years. I haven't had a chance to research this. How do we attack this? I

mean, I don't know how I am supposed to communicate with you right now.

THE COURT: I leave that to you.

THE DEFENDANT: Okay. Are you clear what I'm trying to say, Your Honor?

THE COURT: I think so.

THE DEFENDANT: Okay. So, I don't have to go into -- any deeper into this issue?

THE COURT: Well, that's up to you to what extent you are going to explore any issue.

THE DEFENDANT: I'm saying that a general verdict was rendered and that this court doesn't have any idea on what phase of 841, if it's 841 or other counts, that it's sentencing me on today. So, I don't see how I can be sentenced until we have an evidentiary hearing as to what exactly I was found guilty of by the jury.

I guess that's enough for that right now.

Your Honor, when you were speaking now, you said that all the motions that are filed to date are being construed under 2255?

Count 1 for a new trial is in order. Again, I request a new trial due to the subpoena of Margaret Murphy, that she didn't show up, and the information she has will confirm -- will confirm my torture.

Your Honor, there is too many other motions here that have to go through. Oh, also the information on Michael Ayd recanted his testimony is very important. Michael Ayd testified that I talked to him about drugs. He gets in there. He assumed I was talking about cocaine. And I was talking to Mr. Ayd about drugs, but it was marijuana, not cocaine, that I had done drug dealings with Pebbles with. Remember, I had purchased three or four hundred pounds of marijuana from Mr. Pebbles. I never purchased cocaine. And Mr. Pebbles delivered that to my house. And that testimony with John Bolger -- lied on the stand -- and I have since spoken with Larry Pebbles, and Larry Pebbles said he released all the information to the DEA as to my marijuana purchases. Yet, John Bolger of the DEA lied saying that I never purchased marijuana.

of the opinion that Mr. Lambros is not suffering from any mental illness which renders him incompetent. I did not hire a radiologist to review the x-rays in this case. I did have available the results of the CT scan that were done by the expert chosen by Mr. Lambros's family. I also had available the results of the MRI done through the Cushing Memorial Hospital in Kansas at the direction of the staff psychiatrist at Leavenworth.

I have nothing further in terms of the factual record, Your Honor. I do have some matters to address in terms of sentencing.

THE COURT: Yes. That will be next. Very well. We will now proceed to sentencing. Defendant's request for a new PSR is denied. Further, the court will not disturb the sentencing factors determined to be applicable for the sentencing court with the exception of the length of sentence under Count 1. Specifically, the defendant is a, quote, career offender, unquote, under the guidelines providing an offense level of 37. His criminal history category is 6. Under the

sentencing guidelines, Chapter 5, part A, the range of imprisonment is 360 months to life.

First, the parties will be heard with respect to the other sentencing factors.

Ms. Ceisel, do you have anything in this regard?

MS. CEISEL: I do, Your Honor.

THE COURT: This will be followed, Mr. Lambros, by your remarks so that you -- I am advising you so that you may be prepared.

THE DEFENDANT: Okay.

MS. CEISEL: Again, Your Honor, I have available for the court a letter that sets forth evidence as to Mr. Lambros's current medical condition. He has asked that this be admitted as part of the sentencing exhibits. He understands that this is otherwise confidential medical information.

Is that accurate, Mr. Lambros?

THE DEFENDANT: I am sorry. I wasn't listening.

MS. CEISEL: I have available for the court the letter that I received from Leavenworth detailing your medical condition at this time. Do you understand that that is

wish to appeal this sentence, you have 10 days within which to file your notices of appeal.

Ms. Ceisel, you will, if he wants to appeal, you will be available to make sure that proper instruments are filed?

MS. CEISEL: Yes, sir.

THE COURT: Yes, Mr. Lambros.

THE DEFENDANT: Yes, Your Honor. I don't have a complete understanding. Now, the motions that I -- that we spoke about, are they --

THE COURT: I have denied them and I have informed you that a written opinion will be submitted so that you will have it in front of you exactly what the court has done.

THE DEFENDANT: Okay. And regarding the general verdict, on which element --

THE COURT: That's a matter of argument that you will raise with the Court of Appeals if there is an appeal.

THE DEFENDANT: So, you are giving me --

THE COURT: Well, I'm not -- your attorney will advise you in that. It's not

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

United States of America, Plaintiff, -vs- John Gregory Lambros, Defendant.	4-89 Crim. 82(05) Minneapolis, Minnesota January 15, 1993 9:30 o'clock a.m.

VOLUME VII

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE DIANA E. MURPHY,
CHIEF UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:

For the Plaintiff: Douglas R. Peterson, Assistant U. S. Attorney

For the Defendant: Charles W. Faulkner

Court Reporter: Edith M. Kitto
552 U. S. Courthouse
Minneapolis, Minnesota

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EXHIBIT D.

34.

THE COURT: Anything further, Mr. Peterson?

MR. PETERSON: No other witnesses at this time, Your Honor.

THE COURT: Members of the jury, we're going to take a brief recess now, and then we'll be beginning with the closing arguments.

I think at the beginning of the trial there may have been a few of you that took some notes. I don't think anybody is taking them now. But I just want to make sure that you understand that you may not take notes during the closing arguments, because the statements of the lawyers are not evidence, as I told you at the beginning of the case.

And in these closing arguments, the lawyers have more leeway than in the opening statement. They can review the evidence with you and present each side's theory of the case. But if either lawyer should make a statement that differs from your recollection of the evidence, it's your recollection that controls.

And the law does require that the Court meet with counsel before this stage of the trial and inform counsel of the law that will be contained in the instructions to the jury. And the lawyers may make reference to the law in their closing arguments.

But if either lawyer should make any reference to the law that differs from the Court's instructions, you, of

course, are to follow the Court's instructions. And after the closing arguments, the Court will be giving you the instructions.

The burden of proof is on the Government, as I've told you, and that controls the order of the closing arguments. The Government presents its argument first, and then the defendant has an opportunity for his argument, and then the Government has an opportunity for a brief rebuttal. So that is what to expect after the recess.

(Recess taken)

THE COURT: Mr. Peterson?

FINAL ARGUMENT OF MR. PETERSON

MR. PETERSON: You've heard a lot from the lawyers in this case. The evidence is in. It's not my plan to rehash everything that every witness said. That's going to be your responsibility when you go to the jury room.

Judge Murphy is going to provide you with some instructions of law as to how to guide your decision-making process. But, in the end, it's you folk who have to ultimately decide who to believe.

This trial process, it's not an intellectual game. It's not a task of lawyer fighting and quibbling with witnesses over where the truth lies. Ultimately, what you people have to decide revolves around questions of judgment,

brings forward one trade slip for Lawrence Pebbles.

Before I talk some more about that, keep in mind that you know, through the testimony of Pamela Lemon, that John Lambros' money laundering activities include transferring his assets into Pamela Lemon's name and having the investments put in her name so that they can be reported on her tax return rather than his.

Mr. Lambros in his testimony, of course, disputed that. I leave it to you to decide whether or not to believe Pamela Lemon in that respect. Her testimony was clear. Her testimony was firm.

But Mr. Lambros says, well, there's this trade slip, Defense Exhibit 1 and Defense Exhibit 2. First of all, keep in mind your common sense again. Lawrence Pebbles is a careful guy. He's dealing cocaine to John Lambros. Even accept Lambros' testimony that he's dealing marijuana. He has a drug relationship with John Lambros.

He has all these cash businesses to keep things away from the Government. So Mr. Lambros wants you to believe that Lawrence Pebbles does one stock transaction involving a thousand bucks in his name through the stock firm of one of his primary drug clients. It doesn't make sense.

And it's with that that I ask you, when you deliberate on this issue, to refer to John Lambros' own tax return, the tax return filed in 1988 for tax year 1987, a

do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors.

Remember at all times you are not partisans. You are judges of the facts. Your sole interest is to seek the truth from the evidence.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and may have occasion to speak on your behalf in court.

A form of verdict has been prepared for your use, and you'll be taking it with you to the jury room. It bears the name of the case -- that's the name of the parties and file number -- and reads as follows:

"We, the jury, find the defendant" -- blank; under the blank is "Guilty" or "Not Guilty" -- "as charged in Count I of the indictment"; blank, "as charged in Count II of the indictment"; blank, "as charged in Count III of the indictment"; blank, "as charged in Count IV of the indictment." Then there's a line for a date and a line for the signature of the foreperson.

General →

38.

EXHIBIT D.

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

United States of America, Plaintiff, -vs- John Gregory Lambros, Defendant.	4-89 Crim. 82(05) Minneapolis, Minnesota January 27, 1994 3:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
(Sentencing)

BEFORE THE HONORABLE DIANA E. MURPHY,
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Douglas R. Peterson, Assistant U. S. Attorney

For the Defendant: Charles W. Faulkner

Court Reporter: Edith M. Fitto
552 U. S. Courthouse
Minneapolis, Minnesota

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39.

EXHIBIT E.

saying that there should not be -- that there should be some continuity between the individual who was the kingpin and those underneath. I don't know exactly how to say it.

THE COURT: I know what you mean. You're saying that he got off pretty light compared to what you're faced with.

DEFENDANT LAMBROS: Well, he's a snitch. And page No. 3, Mr. Pebbles has stated to us that he admits selling marijuana to me. He made the statement to an outside individual, and I believe Mr. Faulkner was made aware of that information. And I'd like it to go on record that Mr. Pebbles admits selling marijuana to me, and I wanted him subpoenaed to state that.

As you know, I'm here for allegedly Mr. Pebbles selling me cocaine. It was for marijuana, as I've stated before, and he made this statement. And Mr. Faulkner was made aware of the fact. I believe DEA agents stated that Pebbles never sold me marijuana. That has to do with paragraph 12.

Mr. Angelo is in here. Mr. Angelo was a client of mine when I was in the investment banking business. I did not deal drugs with Mr. Angelo.

On page 4, paragraph 16, it talks about Tracy Greer, stating that she met me at the Sheraton. Tracy Greer misidentified me on the stand during the court proceedings. Again, they say in the presentence investigation that she met

nightclub prior to going to work for Mr. Pebbles. There would be no reason whatsoever for me not to speak to Margaret Duval.

I mean, it was convenient for the Government to put that in there. Funds were dropped off. They were for legal services by Mr. Pebbles. But I've known Ms. Duval for quite some time. And, yes, she did also visit my offices in the IDS, where she dropped off funds for options trading with Mr. Pebbles.

Number 26, "When testifying, Lambros also repeatedly denied dealing cocaine and contradicted much of the incriminating evidence offered by Lawrence Pebbles," and so forth. Then, again, Mr. Pebbles is willing to be subpoenaed -- in fact, asked to be subpoenaed -- and I asked Mr. Faulkner to testify to the fact that he received a fax from attorney Jeff Orr, stating that Mr. Pebbles would be available for subpoena for sentencing, stating that he did marijuana business, jewelry, and other liquidation business.

Is that not true, Mr. Faulkner?

MR. FAULKNER: Does the Court want me to answer these questions at this point?

THE COURT: Well, I think it's irrelevant here as far as -- the record right now is about your objections to the PSI.

DEFENDANT LAMBROS: Well, this is my objection. I want him to verify it.

41.

THE COURT: Well, Mr. --

DEFENDANT LAMBROS: It says marijuana. I want him to --

THE COURT: I just will assume, for purposes of the record, that all of that is true, for purposes of what we have to do today.

DEFENDANT LAMBROS: And on page 7 it talks about committing perjury. Mr. Peterson is saying I don't have implants. Yet the Court won't let me have an MRI. May 6th, I went to Abbott-Northwestern Hospital.

THE COURT: Okay, let's not get into that. I just issued another order on it. I know that you disagree with it, but let's not get into that now.

DEFENDANT LAMBROS: Okay. Number 36, I exercised authority over individuals. I didn't exercise authority over anybody, because I wasn't doing cocaine business. So I disagree with the enhancement of two points.

Number 40 talks about my previous convictions. As to constitutional law in Brazil, the specialty doctrine applies; thus, all previous offenses are not applicable here.

I was arrested on the parole violation warrant. The Supreme Court in Brazil threw it out, because it was not applicable. If you look in the treaty of extradition between the United States and Brazil, you will notice that any offense has to be dealt with in a special --

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EXHIBIT E.

JANUARY 27, 1994, Sentencing of John G. Lambros by Judge Diana Murphy.

March 4, 1997

John Gregory Lambros
reg. No. 00436-124
USP Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Web site: http://members.aol.com/BrazilByct

THE FOLLOWING PAGES AND LINES WITHIN THE TRIAL TRANSCRIPT OF U.S. vs. LAMBROS, 4-89 Crim. 82(05) CONTAIN THE WORD **"MARIJUANA"** AND MAY REFERENCE IT TO BEING AN ILLEGAL CONTROLLED SUBSTANCE.

I. May 17, 1989, Grand Jury Transcript of **JOHN J. BOULGER.**

1. Page 33, line 16: Q And in particular, in January of 1988 as referenced in Overt Act Paragraph Number 21, there were some discussions between Don Hendrickson and Mr. Lambros concerning drug trafficking, correct? A. That's correct. They met on three separate occasions and discussed marijuana transactions and other drug transactions.

2. Page 34, line 1: Q. He indicated to Mr. Hendrickson he wasn't interested in marijuana as much, as he indicated his business was cocaine. And that it came to be that he didn't get involved with Mr. Hendrickson's interest in any cocaine trafficking or transactions. (I believe the word marijuana was left out)

3. Page 34, line 6: Q. Did Mr. Pebbles provide you with some information as to why Mr. Lambros did not pursue Don Hendrickson's interest in either marijuana or cocaine deals?

II. January 4 and 5, 1993, 9:30 A.M. Transcripts in Volume I, pages I-1 thru I-173.

1. Page 51 Line 18: Q. Were you distributing other drugs? A. There were some Marijuana transactions.

2. Page 140 Line 25: Q. And would it be fair to say that the folks that you were dealing with in southern California were also in the Marijuana business? A. Yes Some of them were, yes.

3. Page 140 Line 4: Q. And you had a pretty extensive knowledge about their dealings in Thai marijuana, too, didn't you? A. Yes I did.

EXHIBIT F.

(1)

MARCH 4, 1997, Trial Transcript, Word "Marijuana"

4. Page 141 Line 7: Q. And to some extenet you had been involved in that business too, hadn't you, sir? A. Yes, I have.

5. Page 141 Line 12: Q. And some of your dealings also took you in that area into various cities in Canada? A. Not personally, but yes. But not with the Thai marijuana.

6. Page 141 Line 16: Q. Marijuana, at any rate? A. On one occasion, that's true, yeah.

7. Page 141 Line 18: Q. Now, sir, is it fair to say that a broker, a person in the situation that you were in, would always want to keep his customers secret from each other? A. Some of the customers came with groups attached to them, and I couldn't keep them secret from each other. But, as a rule, that's true. The wisdom to that is so that they didn't collapse on each other if there were a problem; also to maintain your position as an intermediary.

III. January 7, 1993, 9:30 A.M. Transcripts in Volume III, pages III-365 thru III-523

1. Page III-516 Line 2: Q. Okay, Now, sir, is it correct that your investigation revealed that at the time that the California Mr. Siegel was staying at the Red Lion, he and Mr. Pebbles and Mr. Schriewer from St. Louis, in addition to this cocaine deal were engaged in a marijuana deal? A. That's correct.

2. Page III-516 Line 8: Q. And that, in fact, Mr. Schriewer was in California to pick up 160 plus pounds of marijuana? A. Yes, sir. We learned that from Mr. Pebbles.

3. Page III-516 Line 11: Q. And it was going to be delivered back to Missouri in a Honda Civic? A. I believe it was.

4. Page III-516 Line 23: Q. And all during this time, Mr. Pebbles --well, he was involved in the marijuana deal? A. Yes, sir. After his arrest and after he talked to us, he described these events of Mr. Schriewer coming out and staying at the Balboa Inn. We got those hotel records. They went up to the Ramada Inn off the exit near Mill Valley.

IV. January 8, 1993 1:00 P.M. Transcripts in Volume IV, pages IV-524 thru IV-608

1. Page IV 529 Line 15: A. The two specific meetings that I recall were both in January of 1988, January 12th and I believe January 28th. Mr. Hendrickson and Mr. Lambros met and discussed drug transactions involving marijuana and cocaine. And there came a time that it was more or less left -- there were drugs to be comming in, and they would talk later about the deal. They had arranged a place to exchange drugs, but then the events in February took place and nothing of that sort happened.

EXHIBIT F.

(2)

MARCH 4, 1997, Trial Transcript, Word "Marijuana"

2. Page IV.-532 Line 23: Q. And in sone of these instances were any drugs exchanged? A. Yes. Mr. Hendrickson had provided a sample of marijuana to Mr. Lambros for his purpose to test it to see if it was marketable. They spoke later on a bout that at the meeting on the 22nd at the restaurant. Q. So Mr. Hendrickson gave Mr. Lambros some marijuana? A. That's correct. It was a sample provided by Mr. Hendrickson to Mr. Lambros so Mr. Lambros could see if he could market larger quantities. Q. And Mr. Lambros never returned the sample, is that right? A. He returned the sample, and there was discussion about what a third party thought of the sample. (The sentence should read "HE NEVER RETURNED THE SAMPLE")

3. Page IV-557 Line 1: Q. Remind us which drugs were involved in those discussions. A. Two drugs, marijuana and cocaine. Q. Did Mr. Lambros indicate a preference? A. He indicated his preference was cocaine. My recollection is the word "forte" was used. He indicated that he didn't like to be involved in marijuana because of the bulk involved as opposed to cocaine, which takes up less space.

VI. January 14, 1993 9:15 A.M. Transcripts in Volume VI pages VI-672 thru VI-824

1. Page VI 755 Line 3: Q. What was the money for? A. It was two situations, and I can't be clear of the dates. But, number one, I repaid funds I borrowed from Mr. Pebbles -- I've borrowed money from Mr. Pebbles before for investment purposes -- also repayment of precious stones. And also I had purchased marijuana from Mr. Pebbles. Q. During the time you knew Mr. Pebbles after you got out of prison, how much marijuana did you purchase from him? A. I'd say maybe 300 pounds. Q. Three-hundred pounds of marijuana? A. Yes, sir. Q. How did Mr. Pebbles deliver the marijuana to you? A. Drove to my house. Q. And how did you routinely pay him for that marijuana? A. Well, I didn't keep all of it, to be honest with you. I took some of it, and I talked to, to be quite honest with you, an old friend that wanted to buy it, that might want to buy it. And I returned some of it, and I sold some of it.

2. Page VI 758 Line 15: Q. Did Mr. Angelo confide in you as to what his relationship was with Pebbles? A. No. I assumed he was fooling around, doing something, but I don't want to hear about it. That's not my business. I sold some marijuana. I shouldn't have done it. But I don't want to know about things they were doing. It was just like this Anderson called me up and wanting to do drugs. My object is, listen, I've got a deal, this is stock.

3. Page VI 760 Line 4: Q. Did he try to get you to engage in a marijuana deal with him? A. Yes, he did. Q. And did you, in fact, receive a sample of some marijuana from him? A. At one time he pushed. But before then, to be quiet honest with you, and what really irked me out, he had continually called me at the office. And I said, "Do you want to invest?" He said, "Well, maybe my brother will invest." So he gave me the telephone number to his brother in Duluth. I called his brother. His brother made a trade for me for three, three and a half thousand

dollars, and he didn't pay. So, I mean, after X amount of days when you don't pay, I have to resell the stock, and the difference between what I sell the stock for and what he purchases it for, I have to pay the difference.

And when I found out later that he's working for the Bureau of Criminal Apprehension and they're having him institute stock trades and not paying, I mean, what the hell kind of business is that?

4. Page VI 761 Line 4: Q. Did Mr. Hendrickson push you in regard to a marijuana deal? A. He pushed me. He tried to sell me -- he said, do you want to buy cocaine? Do you want to buy marijuana? I said, you know, fine. I'll listen to what the guy has to say. To be quite honest with you, the man isn't that educated. And if he wants to talk about marijuana or women or whatever, I'm a salesman. I'm supposed to listen to my people, what they have to say.

So I listened to him. I don't want to do it. In fact one of the transcripts shows that I'm not interested in doing that. He wanted to give me some marijuana. I said, fine, I'll take a handful. And I took a handful. He had a big bag of it in his car. Q. Did you ever engage in any marijuana dealing with Mr. Hendrickson? A. No, sir.

5. Page VI 766 Line 12: A. Because, number one, I'm an ex-felon on parole. I don't know what happening. I do know how the Government works. They get these people and say, listen, we're looking for this and this person, and we think he's been doing somethin.

And I had been dealing marijuana; she wasn't aware of that, or anything else. I mean, I was very vulnerable. I don't know what the hell this woman is going to do when she's put up against the wall like she was.

6. Page VI 769 Line 11: A. I was in a very vulnerable situation. I knew I had done the marijuana transaction with him. I was scared. I had done stones with him that were illegal stones, I knew that, and possibly some other investment situations of borrowing the funds could be illegal. I mean, I can talk about this now, because I have immunity under the extradition treaty regarding that.

7. Page VI 771 Line 4: A. It was repayment back. He had borrowed me money -- remember, money was going back and forth from us a lot. I had purchased marijuana from him, and I had purchased stones from him. And also the money he borrowed me, I had used for the market for my out-of-the-country dealings. Q. Did Mr. Pebbles ever include you in the planning of his cocaine dealing business? A. He wanted me to get involved. And I wasn't interested in getting involved. I'd do the marijuana, but, you know, I wasn't interested in the cocanine. Q. Mr. Lambros, do you know a person by the last name of Lewis? A. Roger Lewis? Q.Yes. A. Yes, sir. Q. Where did you meet Roger Lewis? A. I met Roger Lewis maybe back in 1969 or 1970

maybe, possibly '70, '71. Q. Where did you meet Roger Lewis? A. Roger Lewis was a marijuana pilot.

8. Page VI-803 Line 17: Q. But when it did happen, you left the house because of the jealousies of Pam Lemon. It that your testimony? A. Also that, and then also because of marijuana dealings. Q. So it wasn't because these were just calls from other women? A. No. Some of it had to do with marijuana dealings, sir.

9. Page VI-805 Line 2: Q. So you did have a drug-dealer-to-drug dealer relationship with Lawrence Pebbles? A. Yes. I bought marijuana from Mr. Pebbles. I didn't buy cocaine, but I bought marijuana.

VII. January 15, 1993 9:30 A.M. Transcripts in Volume VII pages VII-825 thru VII - 961.

1. Page VII-844 Line 1: Q. During these years, as I understand it, you're dealing marijuana, right? A. Yes, sir. Q. You knew it was illegal? A. Yes, sir. Q. You had no respect for those laws? A. If I sold it, obviously I didn't have respect for those laws. Q. Do you believe that you can pick and choose which laws that you agree with, which ones to follow? A. No, but I can accept responsibility for my actions.

2. Page VII-861 Line 18: Q. No question that Donny Hendrickson had sample amounts of marijuana given to him be government agents, correct? A. One time, yes, sir. He had a sample amount provided by us. It was a procedure we used that was cleared through the superintendent's office. Q. And it was marijuana? A. There's no doubt about that. Q. It was not cocaine? A. That's correct. Q. Did Donny Hendrickson ever bring a sample of cocaine to John Lambros? A. No, sir. Q. Did you ever authorize him to obtain a sample of cocaine from some other source to bring to John Lambros? A. No, sir. Q. That would be outside your procedures, correct? A. Yes, sir. Q. You, in the course of looking at Lawrence Pebbles' operation, determined that he had been involved in the marijuana dealing business, did you not, sir? A. He told us that, yes, sir. Q. Did you confirm that with anyone else? A. Yes, sir. Q. In fact, is it not correct that on February 18, 1988, Mr. Pebbles was involved in a 160 pound-plus marijuana deal in California with Thomas Schriewer-- A. Schriewer, from St. Louis. Q. -- sorry about the prounciation -- and that that marijuana was driven back to Missouri? A. That's correct.

3. Page VII-886 Line 12: Q. But Mr. Lambros says, well, there's this trade slip, Defense Exhibit 1 and Defense Exhibit 2. First of all, keep in mind your common sense again. Lawrence Pebbles is a careful guy. He's dealing cocaine to John Lambros. Even accept Lambros' testimony that he's dealing marijuana. He has a drug relationship with John Lambros. (This is U.S. Assistant Attorney Douglas Peterson's FINAL ARGUMENT TO THE JURY.)

MARCH 4, 1997, Trial Transcript, Word "Marijuana"

47.

EXHIBIT F.

4. Page VI-888 Line 22: Testimony incinsistent with that of John Lambros, but testimony consistent with all the other circumstantial evidence, which includes money laundering for Pamela Lemon, meeting Donny Hendrickson, talking to him about doing stock transactions in his dying brother's name, and consistent with the Larry Pebbles', or so-called Larry Pebbles', Campbell's Soup stock option deal, consistent with having Ziploc bags and gloves, consistent with having those duffel bags in his bedroom next to the safe in the bedroom closet, a safe which, as a bedroom safe, is not going to be holding these bales of marijuana, but certainly a bedroom safe big enough for 2.2. pound packages of cocaine.

MARCH 4, 1997, Trial Transcript, Word "Marijuana"

(6)

EXHIBIT F.

July 7, 2000

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

Attorney Gregory J. Stenmoe
BRIGGS & MORGAN
2400 IDS CENTER
80 South Eighth Street
Minneapolis, Minnesota 55402
Web site: www.briggs.com
U.S. CERTIFIED MAIL NO. 7099-3220-0003-7350-0943 - RETURN RECEIPT REQUESTED

RE: LAMBROS vs. FAULKNER, et al.
COUNT ONE (1) MAXIMUM SENTENCE FOR MARIJUANA IS FIVE (5) YEARS
SEE, U.S. vs. DALE, 178 F.3d 429 (6th Cir. 1999)

Dear Mr. Stenmoe:

As you know, the CONSPIRACY within my indictment included the alleged distribution and/or possession of **MARIJUANA.** Although not stated within my indictment, evidence presented at trial and GRAND JURY testimony offers proof of same. The CONSPIRACY count is count one (1) within my indictment.

U.S. vs. DALE, 178 F.3d 429 (6th Cir. 1999):

In DALE, as in the **EIGHTH CIRCUIT,** the District Court committed plain error in imposing maximum sentence for conspiracy to distribute crack cocaine, rather than imposing maximum sentence for conspiracy to distribute marijuana, where jury was given enhanced unanimity instructions but returned only a **GENERAL VERDICT FORM.** This case offers references to EIGHTH CIRCUIT cases needed for this argument.

CONSPIRACY:

Conspiracy is itself the crime. See, DALE, at 431. A single conspiracy may have as its objective the distribution of two different drugs without rendering it duplicitous. See, DALE, at 431.

Seven of the eighth circuits that have directly considered this issue have decided that the punishment imposed [in distribution of Marijuana & cocaine] CANNOT exceed the **SHORTEST** maximum penalty authorized in the statutes criminalizing the multiple objects [marijuana/cocaine] if the punishment authorized by the CONSPIRACY statute depends on the punishment provided for the substantive offenses which were the objects of the CONSPIRACY. See, DALE, at 432. [Eighth Circuit included]

EXHIBIT G.

This is the case in both DALE and **LAMBROS.** The maximum sentence for conspiracy to distribute a **CONTROLLED SUBSTANCE** depends on the **CONTROLLED SUBSTANCE TO BE DISTRIBUTED.** Title 21 U.S.C. § 846. **LAMBROS'** and DALE's facts are the same, thus the maximum sentence for a conspiracy to distribute **MARIJUANA** is **FIVE (5) YEARS, Title 21 U.S.C. § 841(b)(1)(D).**

EVIDENCE PRESENTED TO THE JURY DURING LAMBROS' TRIAL WHICH SUPPORTS THE ALLEGED POSSESSION AND/OR POSSIBLE DISTRIBUTION OF MARIJUANA:

TRIAL AND GRAND JURY TRANSCRIPT EVIDENCE AS TO MARIJUANA:

1. GRAND JURY TESTIMONY OF JOHN J. BOULGER, DEA AGENT: May 17, 1989, at 11:51 a.m., page 33, lines 20 thru 22;

2. Testimony of Larry Pebbles during trial: Volume I, pages 140, 141;

3. SENTENCING TRANSCRIPT: Lambros stating to court at sentencing that he purchased marijuana from Larry Pebbles and Lambros requesting to have PEBBLES subpoenaed to state same again at the sentencing court so he could be sentenced for marijuana. SENTENCING TRANSCRIPT pages 22, 27; (Please note that FAULKNER would not offer the argument and refused to subpoena PEBBLES.)

4. Testimony of JOHN J. BOULGER, DEA Agent: Volume III, page 516, lines 23 thru 25;

5. Testimony of JOHN J. BOULGER, DEA Agent: Volume IV, pages 529, lines 15 thru 18; page 532, lines 23 thru 25; page 533, lines 3 thru 9; page 557, lines 1 thru 7; (Remind us which drugs were involved in those discussions. Two drugs, **MARIJUANA AND COCAINE**)

6. Testimony of JOHN GREGORY LAMBROS: Volume **VI**, page 755, lines 3 thru 20; (I admit to the purchase of MARIJUANA); page 758, lines 18 & 19; page 761, lines 4 thru 20; page 766, lines 16 thru 19; page 769, lines 11 & 12; page 771, lines 4 thru 6, 13 thru 14; page 794, lines 8 & 9, lines 12 thru 25; page 803, lines 19 thru 23; page 804, lines 23 thru 25; page 805, lines 1 thru 5;

7. Testimony of JOHN GREGORY LAMBROS: Volume **VII**, page 844, lines 1 thru 11;

8. Testimony of JOHN J. BOULGER: Volume **VII**, page 856 & 857. Boulger lies on the stand as to PEBBLES never stating that he sold marijuana to Lambros. Page 862, Boulger admits that PEBBLES is involved in the MARIJUANA business. Page 863, Boulger admits other marijuana deals that PEBBLES was involved in during the CONSPIRACY. Page 864, Boulger again admits MARIJUANA during the investigation and/or CONSPIRACY. Page 867, lines 11 thru 16.

9. FINAL ARGUMENT OF U.S. ASSISTANT ATTORNEY DOUGLAS PETERSON: VOLUME **VII**, page 886, lines 15 thru 17, "[He's dealing cocaine to John Lambros. **EVEN ACCEPT LAMBROS' TESTIMONY THAT HE'S DEALING MARIJUANA.** He has a drug relationship with John Lambros]".

10. REBUTTAL BY U.S. ATTORNEY PETERSON: VOLUME **VII**, page 910, lines 8 thru 10; lines 20 & 21; page 911, lines 5 thru 24; page 922, lines 19 & 20;

11. JURY INSTRUCTIONS BY JUDGE MURPHY: VOLUME **VII**, starts on page 924.

GENERAL VERDICT FORM was requested by Judge Murphy in my trial as to Count One (1) the Conspiracy Count. Therefore, the above references to pages within my transcripts, that you have copy of, proves that I could only of been sentenced under **MARIJUANA, Title 21 U.S.C. § 841(b)(1)(D), A MAXIMUM OF FIVE YEARS INCARCERATION ON COUNT ONE.**

Hopefully the above argument will assist you and your research staff as to the negligence by Attorney Faulkner. You may even want to add this letter to your response to Attorney Faulkner's request for SUMMARY JUDGEMENT.

I have attached a copy of **U.S. vs. DALE, 178 F.3d 429 (6th Cir. 1999)** for your review.

Thanking you in advance for your continued assistance.

Sincerely,

John Gregory Lambros

c:
File

EXHIBIT G.

51.

1988 Edition
Supersedes 1987 Edition

Federal CRIMINAL CODE and RULES

FEDERAL RULES:
CRIMINAL PROCEDURE
HABEAS CORPUS RULES
MISDEMEANOR TRIALS BEFORE U.S. MAGISTRATES
EVIDENCE
APPELLATE PROCEDURE
SUPREME COURT RULES

TITLE 18—CRIMES AND CRIMINAL PROCEDURE
TITLE 21—Chapter 13–DRUG ABUSE PREVENTION AND CONTROL
TITLE 28—Chapter 153–HABEAS CORPUS
—Chapter 175–CIVIL COMMITMENT AND REHABILITATION OF NARCOTIC ADDICTS
TITLE 46—Chapter 38–MARITIME DRUG LAW ENFORCEMENT

ADVISORY COMMITTEE NOTES ON RULES
REVISERS' NOTES ON TITLE 18

Summary of Features on back cover

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Schedules I and II, referred to in subsec. (c)(2), are set out in section 812(c) of this title.

Effective Date; Time to Submit Piperidine Report; Required Information. Section 203(a) of Pub.L. 95–633 provided that:

"(1) Except as provided under paragraph (2), the amendments may by this title [enacting this section and amending sections 841 to 843 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1978].

"(2) Any person required to submit a report under section 310(a)(1) of the Controlled Substances Act [subsec. (a)(1) of this section] respecting a distribution, sale, or importation of piperidine during the 90 days after the date of the enactment of this Act [Nov. 10, 1978] may submit such report any time up to 97 days after such date of enactment.

"(3) Until otherwise provided by the Attorney General by regulation, the information required to be reported by a person under section 310(a)(1) of the Controlled Substances Act (as added by section 202(a)(2) of this title) [subsec. (a)(1) of this section] with respect to the person's distribution, sale, or importation of piperidine shall—

"(A) be the information described in subparagraphs (A) and (B) of such section, and

"(B) except as provided in paragraph (2) of this subsection, be reported not later than seven days after the date of such distribution, sale, or importation."

Regulations for Piperidine Reporting. Section 203(b) of Pub.L. 95–633 provided that:

"The Attorney General shall—

"(1) first publish proposed interim regulations to carry out the requirements of section 310(a) of the Controlled Substances Act (as added by section 202(a)(2) of this title) [subsec. (a) of this section] not later than 30 days after the date of the enactment of this Act [Nov. 10, 1978], and

"(2) first promulgate final interim regulations to carry out such requirements not later than 75 days after the date of the enactment of this Act [Nov. 10, 1978], such final interim regulations to be effective with respect to distributions, sales, and importations of piperidine on and after the ninety-first day after the date of the enactment of this Act."

Report to President and Congress on Effectiveness of Title II of Pub.L. 95–633. Section 203(c) of Pub.L. 95–633 required the Attorney General, after consultation with the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services], to analyze and evaluate the impact and effectiveness of the amendments made by Title II of Pub.L. 95–633 [enacting this section and amending sections 841 to 843 of this title], including the impact on the illicit manufacture and use of phencyclidine and the impact of the requirements imposed by such amendments on legitimate distributions and uses of piperidine, and, not later than Mar. 1, 1980, to report to the President and the Congress on such analysis and evaluation and to include in such report such recommendations as he deemed appropriate.

Code of Federal Regulations

Identification requirements, see 21 CFR 1310.01 et seq.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 845, 845a, or 845b of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substance [1] referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

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(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substance [1] referred to in subclauses (I) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide; or

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at

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least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 100 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of Title 18, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of

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