March 20, 2002

John Gregory Lambros
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ADDENDUM FILING.

THIS LETTER IS IN AFFIDAVIT FORM.

The Honorable Charles E. Grassley
United States Senate
Hart Building 135
Washington, DC 20510
U.S. Certified Mail No. 7001-0320-0005-1590-0443
RETURN RECEIPT REQUESTED

RE: ADDENDUM TO AUGUST 09, 2001, LETTER AND AFFIDAVIT OF JOHN GREGORY LAMBROS TO THE HONORABLE CHARLES E. GRASSLEY AND THE "COMMITTEE ON THE JUDICIARY."

Dear Honorable Charles E. Grassley:

On August 14, 2001, your office received, via U.S. Certified Mail, my August 09, 2001 letter and affidavit, which I have posted within my web site, in PDF format, for distribution to all U.S. and Brazilian Representatives. To date, I have not received a response from your office as to my request for the "Committee on the Judiciary" to investigate my illegal extradition process from Brazil to the United States in U.S. vs. JOHN GREGORY LAMBROS, CR-4-89-82(5), United States District Court, District of Minnesota. In fact, on October 03, 2001, I filed a Freedom of Information/Privacy Act request and Federal Records Act request with your office, requesting an INDEX of all actions taken as to my August 09, 2001 letter and affidavit, to date I have not received a response to same.

SUPPLEMENTAL INFORMATION TO ASSIST THE "COMMITTEE ON THE JUDICIARY:"

I am requesting your office and the "COMMITTEE ON THE JUDICIARY" to supplement my August 09, 2001 letter and affidavit with the following information and documents:

1. Attached newspaper article entitled, "MEXICAN RULING LIMITS EXTRADITION, Those facing life won't go to U.S." by the New York Times, which appeared in the Sunday, January 20, 2002, STAR TRIBUNE, on page A4. Brazilian law and Mexico's law are basically the same, as the Brazilian Constitution **PROHIBITS**, absolutely, the imposition of any penalty of a lifelong character (Article 5, clause XLVII, b) and the very basic legal norm consolidated by Article 75 of the Brazilian

Criminal Code, which limits the maximum prison sentence to **30 (thirty) years.** See, STATE OF WASHINGTON vs. MARTIN SHAW PANG, 940 P.2d 1293, 1352 (Washington, 1997), which is offered as **EXHIBIT T** within LAMBROS' August 09, 2001, AFFIDAVIT.

Please note that Mexico's Supreme Court has blocked the extradition of more than 70 criminal suspects facing life sentences to the United States for drug trafficking and murder. The decision was rooted in Mexico's constitution, which says that all people are capable of rehabilitation and a life sentence, the court ruled, flies in the face of that concept. The maximum sentence in Mexico is **40 (forty) years,** although sometimes a 60-year term may be imposed.

Therefore, the Brazilian Supreme Court allowed John Gregory Lambros to be extradited from Brazil knowing that the only sentence Lambros could receive was a mandatory life sentence without parole. See, U.S. vs. LAMBROS, 65 F.3d 698 (8th Cir. 1995). The **SEDITIOUS AGREEMENT** of the Brazilian Supreme Court in allowing Lambros to be extradited from Brazil can be labeled no other than **TREASONABLE ACTS** against the people of Brazil and the Brazilian Constitution. It was impossible for Lambros to be extradited legally from Brazil, as per the **INDICTMENT** in U.S. vs. LAMBROS, CR-4-89-82(5), United States District Court, District of Minnesota, the October 2001 ruling by Mexico's Supreme Court supports same. Also, please note that **COLOMBIA'S** Supreme Court does not allow extradition of those facing a life sentence and limits maximum prison sentences to **30 (thirty) years.** See, U.S. vs. GALLO-CHAMORRO, 48 F.3d 502, 503 (11th Cir. 1995)(Colombian Supreme Court does not allow more than a 30 (thirty) year sentence, that is enforced within the United States); U.S. vs. ABELLO-SILVA, 948 F.2d 1168, 1174 (10th Cir. 1991)("As for consenting to be bound by foreign law, we recognize that extradition exists only by agreement between states. Restatement (Third) of Foreign Relations Law of the United States § 475, comment b (1987). **Hence, the extradition of individuals occurs subject to any limitation either country imposes.** CCEVAS, 847 F.2d at 1427. The limitations which appear in Decree No. 1860 are few. **The accused must not be sentenced to more than thirty (30) years and the death penalty may not be sought.**)

EXHIBIT A: January 20, 2002, STAR TRIBUNE article entitled, "MEXICAN RULING LIMITS EXTRADITION, Those facing life won't go to U.S."

EXHIBIT B: U.S. vs. GALLO-CHAMORRO, 48 F.3d 502, **Page 503** (11th Cir. 1995); and U.S. vs. ABELLO-SILVA, 948 F.2d 1168, **Page 1174** (10th Cir. 1991).

2. John Gregory Lambros' February 15, 2002, letter to Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility for the State of Minnesota, as to the filing of complaint against Minnesota Attorneys **Peter J. Thompson, Joseph T. Walbran,** and **Robert G. Renner.** This document is a total of twenty-nine (29) pages including exhibits. See, **EXHIBIT C.**

Thanking you and your staff and the members of the United States Senate "Committee on the Judiciary" and there staff for your continued consideration and investigation into my torture, which continues to date, and my illegal extradition from Brazil to the United States. Again, please feel free to communicate freely with me, as to any unclear facts.

Respectfully submitted,

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c:

1. Charles W. Stone, Stone and Associates, 8604 Second Avenue, Suite 222, Silver Spring, MD 20910;

2. Lambros family

3. Release within the Boycott Brazil web site: www.brazilboycott.org

4. E-Mail release to Global Boycott Brazil supporters.

Mexican ruling limits extradition

Those facing life won't go to U.S.

New York Times

MEXICO CITY — Mexico's Supreme Court has blocked the extradition of criminal suspects facing life sentences in the United States, confounding U.S. authorities seeking to convict defendants accused of drug trafficking and murder.

The ruling, handed down in October but published in full last month, has stopped the extradition of more than 70 high-profile defendants.

The decision is rooted in Mexico's constitution, which says that all people are capable of rehabilitation. A life sentence, the court ruled, flies in the face of that concept. The maximum sentence in Mexico is 40 years, although sometimes a 60-year term may be imposed.

The prisoners for whom extradition has been barred include a former state governor, Mario Villanueva, indicted in New York on charges of smuggling 200 tons of cocaine into the United States. Another is Augustin Vazquez Mendoza, who was on the FBI's list of the 10 most-wanted fugitives, charged with the 1994 murder of an undercover drug-enforcement officer in Arizona.

The Drug Enforcement Administration (DEA) spent six years and more than $1 million pursuing Vazquez before his arrest in July 2000. Now it appears that, in order to extradite him, Arizona may have to dismiss the case and try him on lesser charges.

Similarly, the indictment against Villanueva, a fugitive for two years before his arrest in May 2001, will have to be redrawn if he is ever to face justice in the United States, officials said.

The court, in a 6-2 ruling, said a life sentence negated the Mexican constitution's provisions for rehabilitation. "It would be absurd to hope to rehabilitate the criminal if there were no chance of his returning to society," Justice Roman Palacios wrote for the majority.

Trafficking

The decision was a bitter pill for U.S. officials, who cite the Villanueva and Vazquez cases as crucial for establishing a foundation of justice in matters between the countries.

Villanueva, governor of the state of Quintana Roo from 1993 to 1999, is the highest-ranking Latin American politician to face drug charges filed in a U.S. court since the arrest of Gen. Manuel Noriega, the dictator of Panama, in 1989. Villanueva is accused of working with traffickers to import cocaine into the United States, taking a $500,000 bribe for every major shipment that passed through his state in the mid-1990s.

The charges against him filed in U.S. District Court in New York City — two counts of running a "continuing criminal enterprise" — carry a maximum sentence of life in prison for each charge and a $4 million fine. Law enforcement officials in Mexico said the U.S. attorney's office in New York might have to seek a new indictment on lesser charges, carrying a maximum 20-year sentence, against Villanueva, 55.

Vazquez, 31, is charged as the mastermind in the 1994 killing of Richard Fass, a U.S. DEA agent working undercover in Glendale, Ariz.

The state of Arizona charges that Vazquez ordered that Fass be killed to recoup a 22-pound shipment of methamphetamine and the $160,000 that Fass had brought along to pay for it. After six years as a fugitive, and a national manhunt, he was arrested by Mexican authorities 18 months ago.

But last week, a judge ruled that the recent Mexican Supreme Court decision barred his extradition. Arizona has two hard choices if it wants to try Vazquez: drop the murder charge or promise Mexico that he will receive a fixed sentence of 40 years or less if convicted.

EXHIBIT A.

4.

Lisa T. Rubio, Linda Collins Hertz, Dawn Bowen and Thomas O'Malley, Miami, FL, for appellee in No. 91-5949.

Dexter Lehtinen, U.S. Atty., Lisa T. Rubio, Linda Collins Hertz, Dawn Bower, Thomas O'Malley, Miami, FL, for appellee in No. 92-4003.

Appeals from the United States District Court for the Southern District of Florida.

Before KRAVITCH and CARNES, Circuit Judges, and FAY, Senior Circuit Judge.

FAY, Senior Circuit Judge:

In this appeal the Defendant contends that a jury instruction on co-conspirator liability based on *Pinkerton v. United States*, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946), violated the terms of an extradition agreement between the United States and Colombian governments which prohibited the use of 18 U.S.C. § 2, an aiding and abetting statute, in trying the Defendant. Under *Pinkerton* each member of a conspiracy is criminally liable for all reasonably foreseeable crimes committed during the course and in furtherance of the conspiracy. Because criminal liability based on the *Pinkerton* jury instruction does not equate to criminal liability for aiding and abetting under 18 U.S.C. § 2, we find that the district court complied with the terms of the extradition agreement and AFFIRM.

I. BACKGROUND

The Defendant, Joaquin Osvaldo Gallo-Chamorro ("Gallo"), a Colombian national, was arrested in Bogota, Colombia, on January 9, 1990. On January 11, 1990, the United States requested Gallo's provisional arrest. Two months later the United States submitted Diplomatic Note 206 to the Republic of Colombia ("Colombia"), requesting Gallo's extradition to the United States to stand trial for several narcotics trafficking crimes, including violations of 18 U.S.C. § 2, an aiding and abetting statute. The United States requested Gallo's extradition in accordance with Colombia's Decree Number 1860 of 1989.[1]

On September 5, 1990, the Colombian government by resolution extradited the Defendant to the United States for trial on one count of importation of cocaine in violation of sections 952(a) and 960(a)(1) of Title 21 of the United States Code, one count of conspiracy to distribute cocaine in violation of section 846 of Title 21 of the United States Code, and three counts of distribution of cocaine in violation of section 841(a)(1) of Title 21 of the United States Code. The extradition document, Resolution Number 235 of the Colombian Ministry of Justice, denied extradition of Gallo on all other counts and stated that "[t]he [Colombian] Supreme Court of Justice has manifested on several occasions that the violation of Title 18, Section 2, of the United States Code does not has [sic] its equivalent in Colombia, and therefore it does not authorize, either, the extradition for this concept." Section 2 of Title 18 of the United States Code reads as follows:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 2 (1969). The resolution also specified that, if extradited and convicted, Gallo must not be sentenced to prison for more than thirty years.

1. The United States and Colombia entered into an extradition treaty on September 14, 1979. Colombia ratified the treaty by its Law 27 of 1980, and the United States ratified the treaty on November 20, 1981. In 1986, the Colombian Supreme Court held that Law 27 was unconstitutional because it had been sanctioned by a Colombian government official other than the President of Colombia. Because of this ruling, the treaty remains inapplicable in Colombia. 18 U.S.C. § 3181 et seq. However, in 1989 the President of Colombia, pursuant to his martial law powers, issued Decree Number 1860 which provides in pertinent part that "for the purpose of extradition of Colombian and foreign nationals sought for [narcotics trafficking and related] offenses, the procedure set forth in the Code of Criminal Procedure shall be applied, with the modifications set forth herein." *Id.* The issuance of this decree suspended Colombia's requirement that Colombian nationals be extradited only pursuant to public treaties. *Id.*

only those individuals against whom a substantial case lies. A reviewing court places itself in the position of the asylum country and inquires whether the asylum state would consent to the extradition. In other words, we examine whether there is sufficient evidence in the request for extradition to grant the request. If the accused is tried for a matter different from the one mentioned in the request, the requesting country has not satisfied the concerns of the asylum state. The asylum state, therefore, would refuse the extradition request because it was not presented with the case against its resident and had no opportunity to scrutinize the extradition request. In *Paroutian*, the court believed the asylum state, once fully apprised of the facts, would conclude the accused stood trial only for those offenses for which he was extradited. The deference to the asylum state in *Paroutian* cannot be construed to mean the asylum state's jurisprudence governs the specialty doctrine as applied in the United States.

[6, 7] As for consenting to be bound by foreign law, we recognize that extradition exists only by agreement between states. Restatement (Third) of Foreign Relations Law of the United States § 475, comment b (1987). Hence, the extradition of individuals occurs subject to any limitation either country imposes. *Cuevas*, 847 F.2d at 1427. The limitations which appear in Decree No. 1860 are few. The accused must not be sentenced to more than thirty years and the death penalty may not be sought. The only provision of the Colombian Code of Criminal Procedure mandated in the Decree is a reference to Article 660. Article 660, however, deals with individuals who committed an earlier offense in Colombia and are later sought for extradition on another matter. The article states the accused must first complete his sentence in Colombia before extradition takes place.

[8, 9] Unless otherwise directed by treaty or statute, we will look to United States precedent to understand and apply the specialty doctrine. The bulk of authority describes the doctrine in terms of parallel offenses and not parallel facts. For example, Abello's own reference to *Paroutian* belies his contention that the specialty doctrine is about additional facts and not offenses, "the test is whether the trial is for a 'separate *offense*.'" *Paroutian*, 299 F.2d at 491. (emphasis added). In *Levy* we did not address the "facts" versus "offenses" distinction. Instead, *Levy* discussed the specialty doctrine in terms of parallel "charges." *Levy*, 905 F.2d at 328. "Charges" is akin to "offenses." Hence, we conclude the relevant inquiry is the nature of the offenses in the two indictments and not the different "facts" alleged in support of the offenses.

[10–12] Abello's argument implies the extradition request must be the definitive document in a government's case against the accused. This is not so. The specialty doctrine specifically recognizes the possibility, for strategic reasons, that the evidence introduced at trial was withheld from the extradition request. "Thus, there is no right to object at trial to the introduction of evidence that was not part of the request for extradition, so long as the evidence is directed to the charge contained in the request for extradition." Restatement (Third) of Foreign Relations Law of the United States § 477, comment c (1987). The specialty principle is not a vehicle for discovery.

Those cases cited by Abello which scrutinize the "facts" underpinning the request for extradition are distinguishable. Abello cites *United States v. Sensi*, 879 F.2d 888 (D.C.Cir.1989), and the importance the court places on the "established facts" and "evidentiary material." *Id.* at 895–96. Read in its entirety, *Sensi* informs the doctrine of specialty to "requir[e] a correspondence between the charges contained in the indictment and the facts presented to the [asylum country's] magistrate." *Sensi*, 879 F.2d at 895. In Abello's case, the "charges" in the request for extradition are the same as those for which he stood trial. Hence, he hopes for mileage from the "facts presented" language in *Sensi*. The reference to facts, however, stems from the extradition treaty between the

EXHIBIT B.

February 15, 2002

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THIS LETTER IS IN AFFIDAVIT FORM.

Edward J. Cleary, Director
Office of Lawyers Professional Responsibility
Minnesota Judicial Center
25 Constitution Avenue
Suite 105
St. Paul, Minnesota 55155-1500 USA
Tel. (651) 296-3952
U.S. CERTIFIED MAIL NO. 7001-0320-0005-1590-0399

RE: **FILING OF COMPLAINT AGAINST MINNESOTA ATTORNEYS IN 1976, THEIR ACTIONS CARRY FORWARD TO THIS DATE:**

a. **Peter J. Thompson** (Current address: Thompson & Sicoli, LTD., 2520 Park Ave., Minneapolis, Minnesota 55404-4403, Tel. (612) 871-0708);
b. **Joseph T. Walbran** (Current address: Assistant U.S. Attorney, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415);
c. **Robert G. Renner** (Current address: 748 Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, Tel. (651) 848-1180).

Dear Mr. Cleary:

On April 22, 1976, after three days of trial of multiple defendants before a jury in Criminal Indictment Number **3-75-128**, I entered a negotiated plea in two (2) criminal **INDICTMENTS**:

1. **CR-3-75-128**, with judgment entered on June 21, 1976;
2. **CR-3-76-17**, with judgment entered on June 21, 1976;

as per the direction of my alleged competent, self-employed hired attorney, PETER J. THOMPSON. Attorney Joseph T. Walbran was the U.S. Assistant Attorney and Attorney Robert G. Renner was the U.S. Attorney for Minneapolis, Minnesota. See, **EXHIBIT A** (U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976).

Currently, John Gregory Lambros is incarcerated on a non-related sentence, with the above entitled indictments and sentences serving as lodged detainers. Therefore, John Gregory Lambros "remains 'in custody' under all of his sentences **until all** are served. See, PEYTON vs. ROWE, 391 U.S. 54, 67 (1968)("prisoner serving consecutive sentences is 'in custody' under any one of them").

7.

CRIMINAL INDICTMENT CR-3-76-17, DISTRICT OF MINNESOTA, DATED MARCH 24, 1976:

Attached as **EXHIBIT B** is District of Minnesota, Third Division, Criminal Indictment **CR-3-76-17**, dated March 24, 1976. Please note the attached exhibit is a copy of the certified copy dated July 24, 2001 by the Deputy Clerk.

Also attached is **EXHIBIT C**, the docket sheet for Criminal Indictment **CR-3-76-17**. Please note that the docket sheet clearly states LAMBROS was indicted on Title 18 USC 111 and 114, and Robert G. Renner was the U.S. Attorney and Joseph T. Walbran was the Assistant U.S. Attorney. Both the indictment and docket sheet are for violations of **Title 18 U.S.C. Sections** 111 and 114. Both are copies of certified copy dated July 24, 2001, by the Deputy Clerk.

PROBLEM: WHY DO TWO (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS EXIST????

The attached **EXHIBIT D** is the July 24, 2001, CERTIFIED Judgment and Probation/ Commitment Order in Criminal Indictment **CR-3-76-17**, signed by U.S. District Court Judge Edward J. Devitt on June 21, 1976 and by the Deputy Clerk on June 21, 1976. Please note that the Judgment Order clearly states John Gregory Lambros violated **Title 18 U.S.C. Sections 111 and 114, as charged in Count One (1) of the Indictment.**

The second Judgment and Probation/Commitment Order is being offered as **EXHIBIT E.** This second Judgment and Commitment Order is dated June 21, 1976, allegedly signed by U.S. District Court Judge Edward J. Devitt, **BUT NOT SIGNED BY THE DEPUTY CLERK,** as per Criminal Indictment **CR-3-76-17.** Also the word AMENDED appears above the word JUDGMENT. This Second Judgment Order states John Gregory Lambros violated **Title 18 U.S.C. Sections 111 and 1114; as charged in Count One (1) of the Indictment.**

Therefore, the March 24, 1976, INDICTMENT and DOCKET SHEET state that John Gregory Lambros was in violation of **Title 18 USC Sections 111 and 114.** The first June 21, 1976 Judgment and Probation/Commitment Order states that LAMBROS was convicted of violations of **Title 18 USC Sections** 111 and 114, and the ALLEGED second AMENDED June 21, 1976, Judgment and Probation/Commitment Order states LAMBROS was convicted of violations of **Title 18 USC Sections** 111 and **1114.**

MINNESOTA ATTORNEYS THOMPSON, WALBRAN, AND RENNER CLEARLY ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION THAT WAS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN U.S. vs. LAMBROS, CR-3-76-17, DISTRICT OF MINNESOTA:

As this office understands, the Eighth Circuit clearly states that U.S. Attorneys are subject to sanctions under ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE. See, U.S. vs. PEYRO, 786 F.2d 826, 832 (8th Cir. 1986). In U.S. vs. GUERRA, 113 F.3d 809, 818 (8th Cir. 1997), the Eighth Circuit stated, "The cause of justice would be well served if prosecutors would heed the 1935 admonition by the Supreme Court:

> "He [she] may prosecute with earnestness and vigor indeed, he [she] should do so. But, while he [she] may strike hard blows, he [she] IS NOT AT LIBERTY TO STRIKE FOUL ONES. It is as much he [her] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. (emphasis added) BERGER vs. U.S., 295 U.S. 78, 88 (1935).

U.S. vs. GUERRA, 113 F.3d 809, 818 (8th Cir. 1997).

I believe the following ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY and ABA MODEL RULES OF PROFESSIONAL CONDUCT apply to Minnesota Attorneys THOMPSON, WALBRAN, and RENNER:

THE ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

DR-1-102:

(A) A lawyer shall not: . . .

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. [or]

(5) Engage in conduct that is prejudicial to the administration of justice.

THE ABA MODEL RULES OF PROFESSIONAL CONDUCT

RULE 8.3, Reporting Professional Misconduct.

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate authority .....

RULE 8.4, Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...

(c) engage in conduct involving dishonesty, fraud, deceit or **MISREPRESENTATION;** (emphasis added)

(d) engage in conduct that is PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE. (emphasis added)

It is Lambros' understanding that Minnesota common law states that "deceit or collusion" are "virtually identical." See, HANDEEN vs. LEMAIRE, 112 F.3d 1339, 1355 (8th Cir. 1997).

THE QUESTION:

WHETHER THE "ATTORNEYS" ACTED TO "DECEIVE, MISREPRESENT FACTS, AND/OR WERE DISHONEST TO JOHN GREGORY LAMBROS," AS TO THE INDICTMENT AND COURT PROCEEDINGS IN DISTRICT OF MINNESOTA CRIMINAL INDICTMENT CR-3-76-177"

3. On February 24, 1976, John Gregory Lambros was arrested on his **PRIVATE LAND** located at 1759 Van Buren, St. Paul, Minnesota by U.S. Federal Marshals.

4. On March 24, 1976, Attorney RENNER, acting as U.S. Attorney RENNER in the District of Minnesota, presented Criminal Indictment **CR-3-76-17**, to the Grand Jury as to violations of **Title 18, United States Code, Sections 111 and 114** by John Gregory Lambros on February 24, 1976. The indictment contained two (2) counts as to an assault and resistance against certain Deputy U.S. Marshals and narcotics officers. See, **EXHIBIT B.**

5. The Grand Jury Foreman signed the indictment and Harry A. Sieben, Clerk, filed and stamped the Indictment on March 24, 1976. See, **EXHIBIT B.**

6. Title 18 United States Code, **Section** 111, describes "Assaulting, resisting, or impeding certain officers or employees."

7. Title 18 United States Code, **Section 114**, describes "Maiming within **MARITIME AND TERRITORIAL JURISDICTION.**" The term SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES is defined within Title 18 United States Code, **Section 7.**

8. Title 18 United States Code, **Section 114**, is a criminal statute which is part of a complex **JURISDICTIONAL SCHEME** involving the interaction of several statutes: (1) Title 18 USC § 2340, which defines "intent to torture" and "United States" as described in Sections 5 and 7 of this title [**18**], and (2) the **JURISDICTIONAL ELEMENT** of Title 18 U.S.C. **Section 7**, those crimes that occur "**WITHIN THE SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES.**" Statutes in pari materia must be construed with reference to each other, see SULLIVAN vs. FINKELSTEIN, 496 U.S. 617, 632, 110 S.Ct. 2658, 110 L.Ed.2d 563, 578 (1990), and it is this interaction of these statutes which reveals that the crime by John Gregory Lambros was a federal crime that occurred in a federal prison, federal military installation, or on property owned exclusively by the Federal Government after formal cession by the State. Therefore, under this statute, the fact that the crime occurred within the **JURISDICTION** of the United States is an **ELEMENT OF THE CRIME THAT MUST BE ALLEGED IN THE INDICTMENT AND ESTABLISHED AT TRIAL.** While the court may determine, as a matter of law, the existance of federal jurisdiction over a geographic area, whether the locus of the offense is within that area is an **ESSENTIAL ELEMENT THAT MUST BE RESOLVED BY THE TRIER OF FACT.** See, U.S. vs. PRENTISS, 206 F.3d 960, 967 (10th Cir. 2000)(offers an excellent overview as to Title 18 USC Section 7)

9. Since case law supports the requirement that jurisdiction must be alleged in an **INDICTMENT**, it is necessary to inspect Criminal Indictment **CR-3-76-17, EXHIBIT B**, and ask why the Grand Jury WAS NOT presented with proof as to the JURISDICTIONAL ELEMENT, the federal crime occurred on property owned exclusively by the federal government after formal cession by the State of Minnesota.

10. The necessary elements of Criminal Indictment **CR-3-76-17, EXHIBIT B**, Title 18 U.S.C. **Section 114** were never presented to a Grand Jury as required by the **FIFTH AMENDMENT.** The reason for same is simple, the location of the alleged crimes by John Gregory Lambros in violation of Title 18 U.S.C. **Section 114 DID NOT OCCUR ON PROPERTY OWNED EXCLUSIVELY BY THE UNITED STATES AFTER FORMAL CESSION BY THE STATE OF MINNESOTA.**

11. At common law, "the most valuable function of the grand jury was not only to examine into the commission of crimes, but to stand between the prosecutor and the accused, and to determine whether the charge was founded upon credible testimony or was dictated by malice or personal ill will." See, HALE vs. HENKEL, 201 U.S. 43, 59, 26 S.Ct. 370, 50 L.Ed. 652 (1906). Errors in a grand jury INDICTMENT allow only a "guess as to what was in the minds of the grand jury at the time....." See, RUSSELL vs. U.S., 369 U.S. 749, 770, 82 S.Ct. 1038, 8 L.Ed.2d 240, 254-255 (1962)(This underlying principle is reflected by the settled rule in the federal courts that an INDICTMENT **MAY NOT BE AMENDED EXCEPT BY RESUBMISSION TO THE GRAND JURY, UNLESS THE CHANGE IS MERELY A MATTER OF FORM.** Id. at 255). (emphasis added)

11.

12. On August 10, 2001 the Fourth Circuit offered an excellent overview on INDICTMENTS and INFORMATION in U.S. vs. COTTON, 261 F.3d 397, 399 in Head Notes 8, 9, 10, 11, 12, 13, 14, and 15 (4th Cir. 2001). See, **EXHIBIT F.** Please note:

a. "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him." Head Note 8.

b. "When an indictment fails to set forth an essential element of a crime, the court has no jurisdiction to try a defendant under that count of the indictment." Head Note 9.

c. "Because an indictment setting forth all the essential elements of an offense is both mandatory and jurisdictional, and a defendant cannot be held to answer for any offense not charged in an indictment returned by a grand jury, a court is without jurisdiction to impose a sentence for an offense not charged in the indictment." Head Note 12.

13. In fact, the Eighth Circuit, the mother circuit for the District of Minnesota, has offered a number of cases supporting that "[A]n indictment must fairly state all the essential elements of the offense if it is to be sufficient." See, U.S. vs. CAMP, 541 F.2d 737, 738 in Head Notes 2, 3, 4, 6, 7, 8, and 9 (8th Cir. 1976). See, **EXHIBIT G.**

14. Other Eighth Circuit case that support U.S. vs. CAMP as to the failure of the indictment to charge an offense, thus defective to comply with the **GRAND JURY CLAUSE OF THE FIFTH AMENDMENT**, include: (a) U.S. vs. DENMON, 483 F.2d 1093 (8th Cir. 1973); (b) U.S. vs. MILLER, 774 F.2d 883, 884-85 (8th Cir. 1985) ("[T]he INDICTMENT contained no assurance that the GRAND JURY deliberated on the elements of any particular stated offense."); U.S. vs. ZANGGER, 848 F.2d 923, 925 (8th Cir. 1988)("[B]ecause the 'STATUTORY CITATION [appearing in ZANGGER'S INDICTMENT] does not ensure that the GRAND JURY has considered and found all ESSENTIAL ELEMENTS [facts] of the offense charged, see PUPO, 841 F.2d at 1239, the indictment violates ZANGGER'S FIFTH AMENDMENT right to be tried on charges found by the GRAND JURY, see CAMP, 541 F.2d at 740.).

IS JURISDICTION AN ELEMENT OF TITLE 18 USC § 114?

15. Title 18 U.S.C. Section 114 reads, "[W]hoever, within the **SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES**, ...; OR Whoever, within the **SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES**, ..." (emphasis added)

16. IN RE WINSHIP, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), the Supreme Court stated, ([W]e explicitly hold that the Due Process Clause

protects the accused against convictions except upon proof beyond a reasonable doubt of **every fact necessary to constitute the crime with which he is charged.**")

17. The Supreme Court also stated in PATTERSON vs. NEW YORK, 432 U.S. 197, 209-10, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977) ("[T]he Due Process Clause requires the prosecution to prove beyond a reasonable doubt all **the elements INCLUDED IN THE DEFINITION OF THE OFFENSE** of which Perrien is **CHARGED.**" (emphasis added)).

18. The Fifth Circuit addressed the question directly in U.S. vs. **PERRIEN**, 274 F.3d 936, 939, Foot Note 1 (5th Cir. 2001) ("Here the **requirement** that the **ASSAULT** be committed '**within the SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES**' is unambiguously **included in the offense-defining part of the statute.** We therefore doubt that a mere preponderance of the evidence on **THIS ELEMENT** could suffice to support a **guilty verdict.**)

19. U.S. vs. PRENTISS, 206 F.3d 960, 967 (10th Cir. 2000), "Generally, 18 U.S.C. **§ 7**, which defines the SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES, provides the specific **JURISDICTIONAL ELEMENT** the government **MUST** allege and prove in order to establish federal jurisdiction. Accordingly, under **§ 7**, the government must establish the **ESSENTIAL ELEMENT**, e.g. that the federal crime occurred in a federal prison or on a federal military installation. .... While the court may determine, as a matter of law, the existance of federal jurisdiction over a geographic area, whether the locus of the offense is within that area is an **ESSENTIAL ELEMENT** that must be resolved by the trier of fact."

20. U.S. vs. HERNANDEZ-FUNDORA, 58 F.3d 802, 807-812 (2nd Cir. 1995) "The federal enclave laws are a group of statutes that permits the federal courts to serve as a forum for the prosecution of certain crimes when they occur within the '[s]pecial maritime and territorial jurisdiction of the United States', 18 U.S.C. § 7; this jurisdiction includes federal land, and property such as federal courthouses and military bases. ..." Id. at 807 Foot Note 2.

WAS LAMBROS' PLEA INVOLUNTARY ???

21. On April 22, 1976, John Gregroy Lambros, as per the advise of Attorney Thompson, entered guilty pleas to Criminal Indictments **Cr-3-75-128 and Cr-3-76-17.** The record reflects the following proceedings: See, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976) **EXHIBIT A.**

a. "[Y]our Honor, the defendant [Lambros] as part of the negotiation will also this morning tender to the Court a change of plea to **Count 1** of the other **INDICTMENT** in **3-76-17 pertaining to an assault and resistance against**

certain Deputy U.S. Marshals and narcotics officers. This is a non-negotiated plea." (emphasis added) Id. at 963-64.

b. "THE COURT: You want to plead guilty to Count 43 in the major 128 case and you want to plead guilty to the **INDICTMENT** in 3-76-177 DEFENDANT LAMBROS: Yes, Your Honor." (emphasis added) Id. at 964.

c. "On June 21, 1976, Lambros was sentenced to ten years imprisonment on the **ASSAULT CHARGE** and to a concurrent sentence of five years on the drug charge, plus a fine of $10,000, and a three-year special parole term. Immediately thereafter, on motion of the United States Attorney, all other counts of the **INDICTMENT** were dismissed. (emphasis added) Id. at 965.

22. A guilty plea must be entered **KNOWINGLY** and **VOLUNTARILY**, PARK vs. RALEY, 506 US 20, 29 (1992); U.S. vs. ARRELLANO, 213 F.3d 427, 430 **(8th Cir.** 2000,) with the advice of competent counsel. TOLLETT vs. HENDERSON, 411 U.S. 258, 263 (1973).

23. In HENDERSON vs. MORGAN, 426 U.S. 637, 49 L.Ed.2d 108 (1976) the Supreme Court held that "[t]he judgment of conviction was entered without due process of law, since the defendant-petitioner's plea of guilty was involuntary in that he did not receive adequate notice of the offense." (emphasis added). "The question presented is whether a defendant may enter a voluntary plea of guilty to a charge of second-degree murder without being informed that **INTENT TO CAUSE THE DEATH OF HIS VICTIM WAS AN ELEMENT OF THE OFFENSE."** Id. at 111 (emphasis added) "There was no discussion of the **ELEMENTS OF THE OFFENSE** of second-degree murder, no indication that the nature of the offense had ever been discussed with respondent, and no reference of any kind to the requirement of intent to cause the death of the victim." Id. at 113 (emphasis added). "[A]nd clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." Id. at 114 (emphasis added) "[T]here is nothing in the record that can serve as a substitute for either a finding after trial, or a voluntary admission, that respondent had the requisite intent. Defense counsel **DID NOT** purport to stipulate to that fact; they did not explain to him his plea would be **AN ADMISSION OF THAT FACT**; and he made no factual statement or admission necessarily implying that he had such intent. In these circumstances it is **IMPOSSIBLE** to conclude that his plea to the unexplained charge of second-degree murder was voluntary. Id. at 115. "McCarthy extended the definition of VOLUNTARINESS to **INCLUDE** an **'UNDERSTANDING OF THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED, INCLUDING THE REQUIREMENT OF SPECIFIC INTENT . . .'** McCARTHY vs. U.S., 394 US, at 471, 22 L.Ed.2d 418, 428 **(1969).** (emphasis added) Id. at 119.

24. Therefore, how could John Gregory Lambros' plea of guilty be voluntary when the alleged acts in Count I and II in Criminal **INDICTMENT** Cr-3-76-17

contained a **JURISDICTIONAL ELEMENT**, "**Whoever, within the SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES, ...**" [Title 18 USC § 114], which required the crime to occur on federal land, when the alleged acts occurred on private property, the house owned by John Gregory Lambros at 1759 VanBuren, St. Paul, Minnesota? The problem is that Lambros' guilt has not been established neither by a finding of guilt beyond a reasonable doubt after trial nor by Lambros' own admission that he was guilty of Counts I and II in Criminal Indictment **Cr-3-76-17**, due to the fact that the acts never occurred on land owned by the federal government, as the State of Minnesota never offered formal cession to the United States of America/Federal Government, of land located at 1759 VanBuren, St. Paul, Minnesota.

25. Again, please refer to paragraph 21 (a), (b), & (c), and note that Judge Devitt always asked if Lambros wanted to **PLEAD GUILTY TO THE INDICTMENT IN 3-76-17.** The **INDICTMENT** clearly states violations of Title 18 U.S.C. **Sections 111 and 114.**

26. It was only upon Attorney THOMPSON's advice to plead guilty, did John Gregory Lambros plead guilty to a crime that the federal court did not have jurisdiction to proceed on.

PARTIES MAY NOT CONFER JURISDICTION UPON THE COURT!

27. The U.S. Supreme Court has continually stated that subject matter jurisdiction can be raised at anytime and such jurisdictional determination **CANNOT BE WAIVED, STIPULATED, OR CONSENTED TO BY ANY PARTY.** See, INSURANCE CORP. vs. COMPAGNIE BAUXITES, 456 U.S. 694, 702, 72 L.Ed.2d 492, 500-501 (1982)("[F]or example, no action of the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is IRRELEVANT, CALIFORNIA vs. LaRUE, 409 U.S. 109, 34 L.Ed.2d 342 (1972), principles of estoppel do not apply, ..., and a party DOES NOT waive the requirement by failing to challenge jurisdiction early in the proceedings. Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. '[T]he rule, springing from the nature and limits of the judicial power of the United States is INFLEXIBLE and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the **RECORD.**" ..." Id. at 501. (emphasis added).

28. CALIFORNIA vs. LaRUE, 34 LEd.2d 342, 344, Head Note 2 (1972), "Parties **MAY NOT** confer jurisdiction either upon the United States Supreme Court or a Federal District Court by **STIPULATION.**" Also see, foot note 3 on page 348.

29. TURNER vs. BANK OF NORTH AMERICA, 4 U.S. (4 Dall.) 8, 8, 1 L. Ed. 718 (1799) "Silence, inadvertence of consent **CANNOT** give jurisdiction, where the

law denies it." Quoting, SCHULZ vs. NEW YORK STATE EXECUTIVE PATAKI, 960 F.Supp 568, 572 (N.D.N.Y. 1997)("For example, no action by the parties can confer subject-matter jurisdiction upon a federal court. Thus, the consent of the parties is irrelevant ...")

30. The Eighth Circuit has continually stated, "**The parties .... MAY NOT confer subject matter jurisdiction upon the federal court by STIPULATION, and lack of subject matter jurisdiction CANNOT BE WAIVED BY THE PARTIES OR IGNORED BY THE COURT.**" See, PACIFIC NAT'L INS. CO. vs. TRANSPORT INS. CO, 341 F.2d 514, 516 **(8th Cir.)** cert. denied, 381 U.S. 912, 85 S.Ct. 1536, 14 L.Ed.2d 434 **(1965)**. Quoting, FARMERS CO-OP. ELEVATOR, WODEN IOWA vs. DODEN, 946 F.Supp. 718, 724 (N.D. Iowa 1996)(offering an excellent overview of cases from the Eighth Circuit) **See, EXHIBIT H.**

31. LAWRENCE COUNTY vs. SOUTH DAKOTA, 668 F.2d 27, 29 (8th Cir. 1982) ("[F]ederal courts operate within jurisdictional constraints and ... parties by their consent **CANNOT** confer subject matter jurisdiction upon the federal courts."). Quoting, SLYCORD vs. CHATER, 921 F.Supp. 631, 634 (N.D.Iowa 1996)("A federal court therefore has a duty to assure itself that the threshold requirement of subject matter jurisdiction has been met in every case. Id. at 634)

32. "The agreement of the parties simply **IS NOT** dispositive of any issue of the court's subject matter jurisdiction." See, NORTH CENT. P.S., INC. vs. BROWN, 951 F.Supp. 1383, 1393 (N.D.Iowa 1996) (also offers an excellent overview of cases to support this statement)

33. THOMPSON vs. THALACKER, 950 F.Supp. 1440, 1446-1449 (N.D.Iowa 1996)(This case offers an excellent overview on subject matter jurisdiction by the Eighth Circuit and challenges to same by an incarcerated person)

34. U.S. vs. STEWART, 727 F.Supp. 1068, 1069 (N.D.Tex. 1989) "[T]he defendants' motions raise the question of subject matter jurisdiction. See THOR vs. U.S., 554 F.2d 759, 762 (5th Cir. 1977) ("[i]f the **INDICTMENT** ... fail[s] to allege a federal offense, the district court lack[s] the subject matter jurisdiction necessary to try [the defendant] for the actions alleged in the **INDICTMENT.**"); see also 18 U.S.C. **§ 3231** (conferring jurisdiction on the district court to try only those offenses against the laws of the United States). The question of subject matter jurisdiction may be raised at any time, **AND IT CANNOT BE WAIVED BY THE DEFENDANT**. See Federal Rules of Criminal Procedure 12(b)(2) and PON vs. U.S., 168 F.2d 373 (1st Cir. 1948)."

AMENDED JUDGEMENT AND PROBATION/COMMITMENT ORDER???

35. As stated on page 2 of this letter and offered as **EXHIBIT D and EXHIBIT E** to this letter, two (2) JUDGMENT AND PROBATION/COMMITMENT ORDERS EXIST.

36. **EXHIBIT E** is the **SECOND AMENDED** judgment and probation/commitment order in Criminal Indictment **CR-3-76-17**, dated June 21, 1976. Please note that the word **AMENDED** appears above the word judgment. Also please note that the judgment and probation/commitment order **NOW STATES** John Gregory Lambros violated **Title 18 USC Sections 111 and 1114; as CHARGED IN CT. I OF THE INDICTMENT.** See, EXHIBIT E.

37. Upon review of **EXHIBIT B**, the **INDICTMENT** for **CR-3-76-17**, it clearly states that John Gregory Lambros was indicted of violations of **Title 18 U.S.C. Sections 111 and 114.**

38. The question is, **HOW DID** the "ATTORNEYS" confer jurisdiction to the District Court and change the statute John Gregory Lambros was indicted on from **Title 18 USC Section 114 to** 1114???????

39. The court record as offered within **EXHIBIT A**, U.S. vs. LAMBROS, 544 F.2d 962 (8th Cir. 1976), clearly states that Lambros tendered a plea to Count I of the **INDICTMENT IN 3-76-17.** See Paragraph 21 in this letter.

CONCLUSION

40. I JOHN GREGORY LAMBROS believes that a substantial likelihood existed as to Minnesota Attorneys **THOMPSON, WALBRAN, and RENNER** violations of the ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY, THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, and other rules pertaining to the ethics of Minnesota Attorneys.

41. Therefore, John Gregory Lambros is requesting the Minnesota Office of Lawyers Professional Responsibility to investigate the materials provided and investigate **IN WHAT MANNER OR WAY:**

a. Attorneys RENNER and WALBRAN indicted John Gregory Lambros on March 24, 1976, Criminal Indictment Number **Cr-3-76-17**, as to violations of **Title 18, U.S.C., Section 114**, when the alleged crime **DID NOT** occur on U.S. Government Property/Federal Property? Attorney RENNER signed the March 24, 1976 INDICTMENT.

b. Attorneys RENNER, WALBRAN, and THOMPSON allowed John Gregory Lambros to plead guilty to violations of **Title 18, U.S.C., Section 114**, on April 22, 1976, when the District Court **DID NOT** have subject-matter jurisdiction, as the alleged crime **DID NOT** take place on U.S. Government Property/Federal Property?

c. Attorneys RENNER, WALBRAN, and THOMPSON **ALLOWED** the District Court to **AMEND** the JUDGMENT AND PROBATION/COMMITMENT ORDER on June 21, 1976, from violations of **Title 18, U.S.C., Section 114 to Section 1114?**

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

43. I John Gregory Lambros declare under penalty of perjury that the foregoing is true and correct. Title 28 U.S.C. §1746.

Executed on: February 27, 2002

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File

eyeglasses. He also testified that Downey would be able to see the outline of the courtroom gates (separating the courtroom seats from the witness stand) at a distance of 25 feet. We cannot say that Dr. Lucas was not a qualified expert witness. The trial court did not abuse its discretion in appointing Dr. Lucas and allowing him to express his opinion as an expert. *United States v. Atkins*, 473 F.2d 308, 313 (8th Cir.), cert. *denied*, 412 U.S. 931, 93 S.Ct. 2751, 37 L.Ed.2d 160 (1973); *White v. United States*, 399 F.2d 813, 819 (8th Cir. 1968).

[16] Downey next contends that the trial judge erroneously refused to allow him to exhibit to the jury special eyeglasses prepared by Dr. Lucas. The defense intended to produce the eyeglasses for the jury's use in determining Downey's visual acuity without glasses. In light of Dr Lucas' testimony that he did not know what effect the eyeglasses would have on a farsighted or nearsighted person, the trial judge did not abuse its discretion in denying the admission of the eyeglasses.

[17] Downey argues that the district court erred in allowing testimony of unrelated and irrelevant bad conduct by both defendants. Items not previously discussed herein included (1) testimony by Lepp that commencing about a month before the instant robbery he and Downey had made automobile trips to Kentucky and Pennsylvania for the avowed purpose of bank robberies (which were not carried out) and (2) testimony by Agent Northcutt that Downey, when questioned concerning the source of funds for Downey's purchase of the 1969 Thunderbird shortly after the robbery, stated that he "bought it with proceeds from gambling; namely, poker and from a little bit of stealing." We are satisfied that this testimony was admissible to show preparation, plan, intent, knowledge and identity. Fed.R.Evid. 404(b). It is important to note also that the trial judge immediately instructed the jury that the defendant Downey was not on trial for any acts not mentioned in the indictment.

Finally [12] Downey argues there was insufficient evidence to support the guilty verdict against him. In light of our discussion of the evidence and the hearsay statement introduced against Muss we conclude that Downey's contention of insufficient evidence has little merit.

Affirmed.

UNITED STATES of America, Appellee,

v.

John Gregory LAMBROS, Appellant.

Nos. 76-1580, 76-1581.

United States Court of Appeals, Eighth Circuit.

Submitted Oct. 15, 1976

Decided Nov. 16, 1976.

The United States District Court for the District of Minnesota, Edward J. Devitt, Chief Judge, convicted defendant on plea of guilty on charges of possession of cocaine with intent to distribute and assault with deadly weapon upon United States marshals, and defendant's motion to withdraw guilty pleas was denied and defendant appealed. The Court of Appeals, Van Oosterhout, Senior Circuit Judge, held that despite fact that defendant was not informed, at time he entered guilty pleas, of possible

12. Downey also argued that the government acted contrary to the law in not disclosing that none of the robbers wore glasses and that Downey allegedly jumped the teller cages and collected the money. The transcript of the hearing on motions indicates, however, that it had been disclosed that Downey had allegedly jumped the teller cages. Also the discussion by Downey's counsel at this hearing indicates that he was aware that the evidence would show that all three principals wore stocking masks and that none of them wore glasses. Downey's argument, therefore, has little merit.

19.

13.

enhancement of punishment for subsequent violation of Federal Narcotics Act, trial court did not abuse its discretion in denying motion to withdraw guilty pleas.

Affirmed.

1. Criminal Law ⇐274(2)

Trial court did not abuse its discretion in denying defendant's motion to withdraw guilty pleas on charges of possession of cocaine with intent to distribute and assault with deadly weapon upon United States marshals, in view of absence of evidence that Government breached terms of plea bargain agreement, despite fact that defendant, at time he entered guilty pleas, was not informed that punishment for any subsequent violation of Federal Narcotics Act could possibly be enhanced by reason of conviction of narcotics offense to which he entered guilty plea. Fed.Rules Crim.Proc. rule 11, 18 U.S.C.A.

2. Criminal Law ⇐274(1)

Presentence motions in criminal case are to be judged on a fair and just standard.

3. Criminal Law ⇐274(1)

Possibility of enhanced punishment for subsequent conviction under Narcotics Act was collateral and not direct consequence of guilty plea to charge of violating Federal Narcotics Act, and thus court, in proceedings held pursuant to motion to withdraw guilty pleas, was not obligated to explain collateral consequence of possible enhanced punishment. Fed.Rules Crim.Proc. rule 11, 18 U.S.C.A.

Peter J. Thompson, Minneapolis, Minn., for appellant.

Joseph T. Walbran, Asst. U. S. Atty., Minneapolis, Minn., for appellee; Robert G. Renner, U. S. Atty., Minneapolis, Minn., on brief.

Before VAN OOSTERHOUT, Senior Circuit Judge, and HEANEY and BRIGHT, Circuit Judges.

VAN OOSTERHOUT, Senior Circuit Judge.

This is an appeal by defendant Lambros from final judgment convicting him on pleas of guilty on the charges hereinafter described, the resulting sentence, and the denial of his motion for leave to withdraw guilty pleas made by him.

No. 76–1580 is the prosecution based on a multiple count indictment against the defendant and numerous other persons charging an extensive conspiracy to import cocaine and distribute it in Minnesota. Lambros entered a plea of guilty to Count 43 charging possession of two pounds of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1).

No. 76–1581 is an indictment charging assault with a deadly weapon upon United States Marshals at the time of defendant's arrest on the drug charge.

On April 22, 1976, after three days of trial of multiple defendants before a jury in case No. 76–1580, and after other defendants at the trial had entered guilty pleas, the record reflects the following proceedings:

MR. WALBRAN: [Assistant United States Attorney.] Your honor, on yesterday morning, on this, our fourth day of trial, and what would be our third day of evidence taken in the cocaine conspiracy case 3–75–128, we have arrived at a satisfactory disposition of the case. It is the intention of the defendant John T. Lambros to enter a change of plea in the case number 128 as to Count 43 of the indictment. That would be a tender of a negotiated plea, Your Honor, under which the defendant would receive no more than five years incarceration and a special parole term of whatever length the Court determines, but at least three years.

Your Honor, the defendant as part of the negotiation will also this morning tender to the Court a change of plea to Count 1 of that other indictment in 3–76–17 pertaining to an assault and resistance against certain Deputy U. S. Marshals and narcotics officers. That is a non-ne-

gotiated plea. That is, the offense carries a maximum penalty of ten years and $10,000 and Mr. Lambros will simply enter a plea of guilty.

It is our understanding and our negotiation that the two sentences to be imposed would be served concurrently. It is further our assurance, Mr. Lambros, that we will not pursue any cocaine-related charges against his wife Christina. This is a matter which concerns him and we are satisfied the ends of justice have already been served in her case.

It is also part of the negotiations that the United States Attorney will not pursue a potential or latent charge arising from Mr. Lambros' possession of three electronics devices which seem to be bugging devices and which the FBI has been investigating for us. We will not pursue those charges now.

Have I correctly stated the negotiations, Mr. Thompson?

MR. THOMPSON: [Defendant's attorney:] Yes.

MR. WALBRAN: Mr. Lambros, have I correctly stated it?

DEFENDANT LAMBROS: Yes, you have.

MR. WALBRAN: Do you understand it?

DEFENDANT LAMBROS: Yes, I do.

THE COURT: You want to plead guilty to Count 43 in the major 128 case and you want to plead guilty to the indictment in 8-76-17?

DEFENDANT LAMBROS: Yes, Your Honor.

Thereafter the prosecuting attorney, at the court's request and in the presence of the defendant and his attorney, explained defendant's constitutional rights in detail and the penalties involved in the pending charges, and questioned defendant with respect to his knowledge and understanding of such rights, and the voluntariness of his guilty pleas. Thereafter the court personally addressed and interrogated the defendant as follows:

THE COURT: Did you give true answers?

DEFENDANT LAMBROS: Yes, Your Honor, I did.

THE COURT: To all these questions, they were all truthful?

DEFENDANT LAMBROS: Yes, sir.

THE COURT: Do you want to plead guilty to this count?

DEFENDANT LAMBROS: Yes, Your Honor, I do.

THE COURT: You are guilty?

DEFENDANT LAMBROS: Yes, Your Honor, I am

THE COURT: Do you have any questions you want to ask about it?

DEFENDANT LAMBROS: No, Your Honor.

THE COURT: You fully understand everything that is going on?

DEFENDANT LAMBROS: Yes, Your Honor.

THE COURT: Have you had enough time to visit with your lawyer about pleading guilty to this count?

DEFENDANT LAMBROS: Yes, I have, Your Honor.

THE COURT: Then I will accept the guilty plea as to Count 43 with the understanding that I will read the probation report, and if I think the limitation of time that you have negotiated is appropriate I will accept it, and you have negotiated for a maximum of five years plus a special parole term of unlimited duration, and it's also understood, I understand, that you plead guilty to the assault count, the assault indictment in 8-76 17.

It's also understood that the United States Attorney will not prosecute your wife for some possible offense and that there will be no other drug-related prosecutions on behalf of the government. Is that the full understanding that you have?

DEFENDANT LAMBROS: Yes.

Defendant's constitutional rights and the consequences of his guilty plea were also explained in connection with the assault

charge. The question of accepting the defendant's guilty plea on the assault charge was taken up immediately following the Rule 11 hearing on the drug charge.

Time for sentencing was fixed for June 21, 1976. On the morning of that day and before sentencing, defendant filed a motion for leave to withdraw his guilty plea in each of the two cases based upon two grounds, to wit: (1) Defendant's arrest on June 17, 1976, on a new drug charge materially changed defendant's position and violated the express and implied terms of the plea bargain and nullified the plea bargain agreement. (2) While defendant was advised as to certain consequences of his guilty plea in accordance with Rule 11(c), he was not apprised that the consequence could also expose him to substantially longer terms of imprisonment for subsequent convictions under the Federal Narcotics Act.

The court denied the motion and subsequently, on July 29, filed a memorandum explaining its reasons for so doing.

On June 21, 1976, Lambros was sentenced to ten years imprisonment on the assault charge and to a concurrent sentence of five years on the drug charge, plus a fine of $10,000, and a three-year special parole term. Immediately thereafter, on motion of the United States Attorney, all other counts of the indictment were dismissed. We find nothing in the record which reflects in any way a failure of the Government to carry out its plea bargain obligation with respect to not prosecuting defendant's wife, or in any other respect.

[1] Defendant seeks a reversal upon the broad ground, supported by various contentions hereinafter set out and discussed, that the court abused its discretion in denying his presentence motion for leave to withdraw his plea of guilty. We find no abuse of discretion and affirm the conviction.

The standard for review of motions to withdraw a guilty plea before sentence is somewhat more lenient than that applying to such motions filed after sentencing.

[2] Presentence motions are to be judged on a "fair and just" standard. *United States v. Bradin*, 535 F.2d 1039, 1040 (8th Cir. 1976). A good discussion of the fair and just standard is found in *United States v. Barker*, 168 U.S.App.D.C. 312, 514 F.2d 208, 220–222 (1975). In *United States v. Benson*, 469 F.2d 222, 223 (8th Cir. 1972), we stated:

> In *United States v. Woosley*, 440 F.2d 1280 at 1281 (CA8 1971) we said: "Rule 11 proceedings are not an exercise in futility. The plea of guilty is a solemn act not to be disregarded because of belated misgivings about the wisdom of the same." We are abundantly satisfied that the trial court's denial of appellant's motion to withdraw his plea of guilty was not an abuse of discretion. *United States v. Rawlins*, 440 F.2d 1048, 1045–1046 (CA8 1971).

Defendant's contention that the Government breached its plea bargain agreement is wholly without merit. Defendant's June 17 arrest, which occurred nearly two months after his guilty plea, is based on a drug offense alleged to have been committed on June 17, 1976. There is no support for defendant's claim that an investigation of defendant for narcotics offenses was in operation at the time of the guilty plea or that the Government had any knowledge at the time of the guilty plea that the defendant was continuing to operate an illegal drug business.

Defendant also challenges the sufficiency of the court's personal participation in the Rule 11 proceedings. He concedes that appropriate questions and information were sought by the Government attorney and points to no way in which he was misled or prejudiced by the Rule 11 proceedings. Before accepting the guilty plea, the court by personal, direct inquiries, heretofore set out in detail, ascertained that the defendant's responses to the Government attorney's questions were truthful, that he fully understood his rights and the consequences of his plea, that he had no question to ask, that he admitted that he had committed the

acts charged and that he was guilty of the offenses charged, and that he had a full opportunity to consult with his attorney with respect to his plea.

Defendant was an intelligent person and was represented by competent, self-employed counsel.

The court by its personal questioning on a sound basis in effect adopted the extensive record made by the prosecuting attorney. We hold that there has been substantial compliance with Rule 11, reserving for the moment the issue next discussed.

Defendant further contends that under certain circumstances punishment for a subsequent violation of the Federal Narcotics Act can be enhanced by reason of his prior conviction under the narcotics act, and that he was entitled to be informed of such consequences, and that he was not so informed. The trial court in its opinion held that such was a collateral consequence and not a direct consequence, and in support thereof, stated:

> The cases cited by defendant do indicate that a defendant must be informed of certain legal consequences of his plea. Courts have used the label "direct" consequences to denote those which must be communicated and the label "collateral" consequences for those which need not. In *Weinstein v. United States*, 325 F.Supp. 597, 600 (C.D.Calif.1971), a case presenting a similar claim of involuntariness, the court stated:
>
> > Rather petitioner would have us hold that he must be told of all possible collateral consequences which might ensue from a plea of guilty or from a conviction, since the results collaterally in the future are the same. No authority is cited to support him.
>
> It is true that the present sentence he is serving on a narcotics charge was enhanced because of this 1956 narcotics conviction on his plea of guilty, but we know of no ruling in this or any other Circuit that he should have been advised of this possibility before entering the original plea. We agree with the holding in *Fee v. United States*, 207 F.Supp. 674, 676 (W.D.Va.1962):
>
> > To the best of my knowledge it has never been suggested that the court is under any duty to warn of such a possible result. [They] have a right to assume that the defendant will not be guilty of a subsequent offense

In *Cuthrell v. Director*, 475 F.2d 1364, 1366 (4th Cir. 1973), the court states and holds:

> The law is clear that a valid plea of guilty requires that the defendant be made aware of all "the direct consequences of his plea." By the same token, it is equally well settled that, before pleading, the defendant need not be advised of all collateral consequences of his plea, or, as one Court has phrased it, of all "possible ancillary or consequential results which are peculiar to the individual and which may flow from a conviction of a plea of guilty, * * *." . . .
>
> The distinction between "direct" and "collateral" consequences of a plea, while sometimes eluded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment. [Citations omitted.]

The trial court stated that it was not taking the subsequent charge into consideration in imposing sentence.

[3] We agree that the possibility of enhanced punishment in a subsequent narcotics act violation is a collateral and not a direct consequence of the guilty plea, and hence that the court in the Rule 11 proceedings is not obligated to explain the collateral consequence.

In support of its exercise of discretion in denying the motion to withdraw the guilty plea, the court stated:

> Defendant admits that an established ground for refusing to allow plea withdrawal is the possibility of prejudice to

EXHIBIT A.

23

17.

the government. The defendant was part of a widespread drug distribution scheme. Many of the key witnesses were co-conspirators who wished to lessen their sentences. They have now pleaded guilty, been sentenced, and transferred to prison. The expense of assembling them for trial would be great and, more importantly, the incentive for them to testify with the possibility of sentence reduction foreclosed is small. When this prejudice is weighed against defendant's motivation for withdrawal, the merit of the motion is insubstantial. Defendant does not contend that he is innocent or that he has unearthed a valid defense. Rather he simply wants to put all of his criminal offenses in one basket. He can only do this at a great cost to the government. Therefore, withdrawal will not be allowed.

The record in the present case fully supports the trial court's determination. The record shows that three days of the prosecutor's time, the time of the witnesses, and the time of the court was consumed in the jury trial before the guilty plea was entered, and that considerable difficulty would be involved in assembling the many witnesses used by the Government in the multiple conspiracy charges, and in refreshing the recollections, and in obtaining many witnesses incarcerated in penal institutions.

We are convinced that the court did not abuse its discretion in denying leave to the defendant to withdraw his guilty plea to the two charges here involved.

Affirmed.

Homer H. BLEVINS and Continental Insurance Co., Inc., Appellees,

v.

COMMERCIAL STANDARD INSURANCE COMPANIES, Appellant.

No. 76-1332.

United States Court of Appeals, Eighth Circuit.

Submitted Oct. 14, 1976.

Decided Nov. 16, 1976.

Appeal was taken from an order of the United States District Court for the Western District of Arkansas, Paul X. Williams, Chief Judge, entering judgment in favor of an injured party and an excess insurer who intervened in injured party's direct action against the primary insurer regarding payment of a personal injury judgment arising from an automobile accident. The Court of Appeals, Van Oosterhout, Senior Circuit Judge, held that the Arkansas direct action statute does not require the issuance of a writ of execution and its return nulla bona before allowing a direct action against the primary insurer; that the district court's determination that the underlying personal injury judgment against the tortfeasor was not procured by fraud, collusion or bad faith and was therefore binding on the primary insurer was not clearly erroneous; and that the excess insurer became subrogated to the rights of the insured to recover from the primary insurer legal expenses it incurred.

Affirmed.

1. Courts ⇐406.2

In diversity case, interpretation of district court on question of state law is entitled to great deference.

2. Insurance ⇐612.1(5)

Arkansas statute permitting injured party holding judgment against tort-feasor to maintain direct action against tort-feasor's liability insurer provided such judgment remains unsatisfied at expiration of 30 days from serving of notice of entry of

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA

v.

JOHN G. LAMBROS

CR 3-76-17

I N D I C T M E N T

(18 U.S.C. §§111 and 114)

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT I

On or about the 24th day of February, 1976, in the State and District of Minnesota, the defendant,

JOHN G. LAMBROS,

knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is, a Browning .9 mm semi-automatic pistol, did forcibly assault, resist, oppose, impede and interfere with Deputy United States Marshall James L. Propotnick, and Special Agents Donald E. Nelson and James P. Braseth of the Federal Drug Enforcement Administration while the said officers were engaged in the performance of their official duties; in violation of Title 18, United States Code, Sections 111 and 114.

COUNT II

On or about the 24th day of February, 1976, in the State and District of Minnesota, the defendant,

JOHN G. LAMBROS,

knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is, a Browning .9 mm semi-automatic pistol, did forcibly assault, resist, oppose, impede and interfere with Deputy United States Marshall Leon A. Cheney while the said officer was engaged in the performance of his official duty; in violation of Title 18, United States Code, Sections 111 and 114.

MAR 24 1976

Filed _____ in _____
Harry H. Wilson, Clerk
By _____

A TRUE BILL

United States Attorney

Foreman

A true copy in 2 sheet (s)
of the record in my custody.
CERTIFIED 3/24/76
Richard D. Sletten, Clerk
BY: _____
Deputy Clerk

EXHIBIT B.

25.

CRIMINAL DOCKET - U.S. District Court

U.S. vs LAMBROS, John G.

Judge/Magistrate Assigned: 6406

Felony: 84U-3

Case Filed: 09 24 — No. of Defts: 1

Docket No.: 76 - 17-8 - 1

U.S. TITLE/SECTION	OFFENSES CHARGED	ORIGINAL COUNTS
18 USC 111 and 114	Knowingly, intentionally, and by means and use of a deadly and dangerous weapon, that is Browning .9 mm semi-automatic pistol, did forcibly assault resist, oppose, impede and interfere with officers engaged in performance of their official dues	2

BAIL • RELEASE: $25,000 — Cash or Surety Bond

KEY DATES & INTERVALS

ARREST or U.S. Obligations Began: 3-24-76 3-9-76

INDICTMENT / Information: 3-24-76

5-76

MAGISTRATE

ATTORNEYS

U.S. Attorney or Asst.:
Robert G. Renner, U. S. Attorney
Joseph T. Walbran, A.U.S.D.A.

A true copy in 2 sheets of the record in my custody. 7-24-2002
CERTIFIED. Richard D. Sletten, Clerk
BY: [signature] Deputy Clerk

DATE	DOCUMENT NO.	PROCEEDINGS
3-24-76	1.	INDICTMENT (Devitt-J CR. 188)
	2.	TRANSMITTAL ORDER directing that deft. be cont. on $25,000 C/S JEC. Also has $25,000 C/S bond in CR. 375-128 (Lodged in CR. 3-76-16)
3-31-76	3.	Placed ORDER REDUCING BAIL filed 3-9-76 at Minneapolis in JEC 76 49M in file reducing bail to $25,000 cash or surety which is in addition to bail previously set in narcotics case 2. Condition of bail that deft. report in person at the office of the U. S. Marshal every weekday no later than 9 A.M., that he not possess firearms and that he turn in his passport to the U. S. Marshal. (J. Earl Cudd, U. S. Mag. 3-9-76)
	4.	APPEARANCE BOND $25,000 CASH executed 3-9-76 at Minneapolis. On 3-10-76 placed $25,000.00 cash Bail in Registry of Court JEC 76-49M 4th Div.
	5.	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING MARCH 3, 1976 at Minneapolis
4-22-76	6.	MINUTES OF PROCEEDINGS: Deft. arraigned on Ct. I and Plea of Guilty entere Bond cont'd. Imp. of sent. of impr. deferred and matter is referred to the prob. Office for pre-sent. invest. and report. Count II to be dismissed at time of sentencing. (Devitt-J) (Anderson-Reporter)
6-21-76	7.	DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEAS (copy-original in CR. 3-75-128)

EXHIBIT C.

26.

FORM AO-256

DATE	DOCUMENT NO.	V. PROCEEDINGS continued, PAGE TWO
6-21-76	(8)	MINUTES OF PROCEEDINGS (Devitt-J; Anderson-Reporter) Sentencing: Committed to the cust. of the Atty. Gen. for imprisonment for a period of ten (10) years. Count II dismissed on motion of the Govt.
	(9)	JUDGMENT AND COMMITTMENT. Cert. copies to U.S. Marshal, U. S. Attorney and Probation.
	(10)	AMENDED JUDGMENT AND COMMITMENT. Cert. copies to U. S. Marshal, U. S. Attorney and Probation Office.
7-1-76		NOTICE OF APPEAL in CR. 3-75-128 and CR. 3-76-17 from the denial of deft's Motion to withdraw a guilty plea in the matters and Court's judgment of conviction entered June 21, 1976 to U. S. Court of Appeals for the Eighth Circuit. Aff. of serv. 6-30-76.
		NOTICE TO COUNSEL WITH CERT. COPY OF NOTICE OF APPEAL ATTACHED to counsel and Earl Anderson, Court Reporter, 784 Federal Building, St. Paul, Minnesota 55101, 612 227-1223
		Mailed two cert. copies of Notice of Appeal in CR. 3-75-128 and CR. 3-76-17 with two cert. copies of Docket Entries herein to Robert C. Tucker, Clerk, U. S. Court of Appeals For the Eighth Circuit, U. S. Court House, St. Louis, Missouri 63101 with covering letter to counsel. Mailed Form To Be Submitted.
7-2-76		DEFT.'S MOTION TO AMEND AND REDUCE SENTENCE imposed 6-21-76 to remove and delete the fine imposed. Aff. of serv. 7-1-76 . Aff. of John Gregory Lambros attached. (in CR. 375-128 and CR. 3-76-17) (Lodged in CR. 3-75-128)
7-9-76		DEFT. JOHN GREGORY LAMBROS' NOTICE OF MOTION for Order reducing and amending the sentence with regard to fine for hearing July 14, 1976 at 9 A.M. at St. Paul or as soon thereafter as counsel can be heard. (Filed in CR 3-75-128 and CR 3-76-17) Aff. of serv. 7-7-76. (Lodged in CR. 3-75-128)
7-13-76	(304 in CR 3-75-128)	Notice of Motion to Seek Return of Fine Monies in CR 3-75-128 and CR. 3-76-17. For hearing 7-14-76 9 A.M.. Aff. of John Lambros attached. Aff. of personal serv. 7-13-76 Daniel M. Scott. (Lodged in CR 3-75-128)
7-14-76		MINUTES OF PROCEEDINGS (Copy) Hearing on Motion of Deft. for Order reducing and amending sent. with regard to fine: argued, submitted and taken under advisement. Motion of John W. Lambros to see return of fine monies:

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

EXHIBIT C.

27.

21.

D. C. 106A
CRIMINAL DOCKET

DATE	PROCEEDINGS Page 3
7-14-76	Argued, submitted and taken under advisement. Memorandum of Law are to be submitted. (In CR 3-75-128 (24) and CR 3-76-17) (Devitt-J) Anderson-Reporter by Tiffany)
-16-76	(17) PETITION AND ORDER FOR RELEASE OF CASH BAIL of $25,000.00 to John Lambros 3213 Ridgewood Road, St. Paul, Minnesota 55112 (Devitt-J 7-16-76) Issued Reg. Check No. 3,365 in sum of $25,000.00 and mailed to John Lambros, 3213 Ridgewood Road, St. Paul, Minnesota 55112 with receipt requested
	(18) DESIGNATION OF RECORD AND STATEMENT OF ISSUES. Aff. of serv.7-15-76.
7-20-76	(19) RECEIPT FOR REGISTRY CHECK by J. W. Lambros on 7-17-76.
7-26-76	(20) REPORTER"S TRANSCRIPT of hearing April 22, 1976 (Anderson-Reporter)
6-29-76	REPORTER'S NOTES OF 6-21-76 (Sent.) (Box G-501, Anderson-Reporter)
7-27-76	REPORTER"S Notes and electronic recording of Motions 7-14-76 (Box G-506, Anderson-Reporter by Bruce Tiffany)
-26-76	(21) REPORTER"S TRANSCRIPT of plea on April 22, 1976.
'-29-76	(329 in CR 3-75-128) MEMORANDUM & ORDER (Devitt-J 7-29-76) that deft's motions to withdraw his guilty plea is denied (Lodged in CR. 3-75-128)
	(22) NOTICE TO COUNSEL
8-4-76 SEE	(331) (23) MEMORANDUM & ORDER (Devitt-J 8-4-76) (copy placed herein) that 1. Defendant's motion to eliminate the fine element of his sentence is denied. 2. The motion of John Lambros,Sr. to recover the $20,000 increment of the bond money withheld for payment of the fine is granted, and that portion of the court's previous order making the bond money subject to the fine is rescinded.
SEE	(332) (24) NOTICE TO COUNSEL with copy of Memorandum & Order
-1-76	(SEE 351 in CR 3-75-128) AMENDED DESIGNATION OF RECORD AND STATEMENT OF ISSUE in CR. 3-75-128 and CR 3-76-17.
9-3-76	(25) CERT. COPY OF JUDGMENT COMMITMENT ORDER WITH MARSHAL'S RETURN 8-27-76
	(26) CERT. COPY OF AMENDED JUDGMENT COMMITMENT ORDER WITH MARSHAL'S RETURN 8-27-76.
9-17-76	(SEE No. 356 in CR. 3-75-128) APPELLEE'S SUPPLEMENTARY DESIGNATION OF RECORD in CR. 3-75-128 and CR 3-76-17) (Lodged in CR. 3-75-128)
9-24-76	(SEE No. 357 in CR. 3-75-128) APPELLEE'S SUPPLEMENTARY DESIGNATION OF RECORD (Second Supplement) (Lodged in CR 3-75-128)
9-27-76	(SEE No. 358 in CR. 3-75-128) APPELLANT'S OBJECTIONS TO APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD AND SECOND SUPPLEMENTAL DESIGNATION OF RECORD. (Affo f serv. 9-24-76) (Lodged in CR 3-75-128)
9-29-76	(SEE No. 361 in CR. 3-75-128) APPELLEE'S RESPONSE TO APPELLANT'S OBJECTIONS TO APPELLEE'S SUPPLEMENTAL DESIGNATION OF RECORD. (In CR. 3-75-128 and CR 3-76-17) (Lodged inCR. 3-75-128)
C-6-76	Mailed Designated Record on Appeal to Robert C. Tucker, Clerk, U. S. Court of Appeals for the Eighth Circuit, U. S. Court House, St. Louis, Missouri 63101 in CR. 3-75-128-24 and CR. 3-76-17 with covering letter to counsel

EXHIBIT C.

28

DATE		PROCEEDINGS
12-8-76	(27)	CERTIFIED COPIES OF JUDGMENT OF U.S. COURT OF APPEALS FOR THE 8th CIRCUIT, No. 1581 affirming judgment and sentence of the District Court dated November 16, 1
	(28)	OPINION, of U.S. Court of Appeals for the 8th Circuit in No. 76-1581 dated November 16, 1976 (Senior Judge Van Oosterhout, and Judges Heaney and Bright). Mailed receipt for mandate to Robert C. Tucker, Clerk, U.S. Court of Appeals for the 8th Circuit.
	(29)	NOTICE TO COUNSEL.
2-13-76	(30)	JUDGMENT (Devitt-J) That deft. do surrender himself to the custody of the U.S. Marshal for the Dist. of Minn. within 10 days from and after the filing of said mandate, and that he do report to the U.S. Marshal at Mpls., Minn. at the U.S. Courthouse at 110 So. 4th St.,
	(31)	NOTICE TO COUNSEL
1-3-77		ORDER (Devitt-J) that proposed intervenor's motions are denied Copy of order mailed to Counsel & John W. Lambros. (Lodged in CR 3-75-128)
1-15-77		MOTION TO REDUCE SENTENCE, with attached AFFIDAVIT of Peter J. Thompson, attorney for defendant. (lodged in Cr.3-75-128, #399)
7-27-77	32)	ORDER, copy (Devitt-J) dening deft's motion for reduction of sentence under Rule 35 (orig. lodged in 3-75-126)
5/1/79	33)	DEFENDANT'S 2255 MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE (CV 3-79-219)
	34)	AFFIDAVIT OF JOHN GREGORY LAMBROS
5/4/79	35)	ORDER DIRECTING RESPONDENT TO FILE A WRITTEN RESPONSE (McPartlin 5/3 government is to file response in wirting within 20 days of date of this order. Mailed copies to counsel.
5/24/79	36)	GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION UNDER 28 USC 2255
6/8/79	37)	RECOMMENDATION(McPartlin 6/5/79) defendant's petition under TITLE 28 USC 2255
	38)	NOTICE TO COUNSEL
6/26/79	39)	ORDER(Devitt 6/26/79) petitioner's petition for a 2255 hearing is denied.
	40)	NOTICE TO COUNSEL
7/16/79	41)	NOTICE OF INTENT TO APPEAL (FILED AS MOTION TO PROCEED IN FORMA PAUPERIS) letter was sent to deft. requesting financial affidavit and also notice of appeal and designation of record.
8/27/79	42)	NOTICE OF INTENT TO APPEAL - mailed copy to 8th Circuit Court of appeals along with certified copies of the docket entries. also copy was mailed to Lambros and U.S. Attorney
	43)	MOTION TO CERTIFY THE RECORD ON APPEAL TO THE UNITED STATES COURTS OF APPEALS FOR THE EIGHTH CIRCUIT

EXHIBIT C.

D. C. 109A
CRIMINAL DOCKET

DATE	PROCEEDINGS
	CR. 3-79-17 U.S. VS. JOHN LAMBROS
/31/79	44) ORDER TO FILE FORMA PAUPERIS (McFarlin 8/30/79) petitioner is permited to file appeal in Forma pauperis. Certified copy of order mailed to the Court of Appeals
	45) NOTICE TO COUNSEL.
27-80	46) OPINION FROM THE U. S. COURT OF APPEALS FOR THE 8TH CIRCUIT dated 1-28-80 (Heaney, Ross, Henley) affirming judgment of the District Court.
	47) MANDATE affirming judgment of the District Court.
	48) NOTICE TO COUNSEL.

EXHIBIT C.

24.

1416

United States of America vs.

DEFENDANT: JOHN G. LAMBROS

United States District Court

DISTRICT OF MINNESOTA-THIRD DIVISION

DOCKET NO. Cr. 3-76-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: June DAY: 21 YEAR: 1976

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Peter Thompson (Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE. ☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged ☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of having knowingly, intentionally, and by means and use of a deadly and dangerous weapon, forcibly assaulted, resisted, opposed, impeded and interfered with Deputy United States Marshal Pospotnick and Special Agents Baleon and Brassel of the Federal Drug Enforcement Administration while said officers were engaged in the performance of their official duties; in violation of Title 18 United States Code, Sections 111 and 1114, as charged in Ct. 1 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends:

EXHIBIT D.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

A true copy, I attest (a)
of the record in my custody.
CERTIFIED 3/24/2001
Richard D. Sletten, Clerk
BY: Deputy Clerk

SIGNED BY
☒ U.S. District Judge
☐ U.S. Magistrate

Edward J. Devitt
DATE June 21 1976

CERTIFIED AS A TRUE COPY ON
This date June 21, 1976
Douglas J. Hefte
CLERK
BY DEPUTY

31

25

United States of America vs.

United States District Court

DEFENDANT: JOHN C. LAMBROS

DISTRICT OF MINNESOTA - THIRD DIVISION

DOCKET NO. Cr. 3-76-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: June, DAY: 21, YEAR: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether (defendant) desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Peter Thompson (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE. [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [ ] GUILTY.

Defendant has been convicted as charged of the offense(s) of having knowingly, intentionally, and by means and use of a deadly and dangerous weapon, forcibly assaulted, resisted, oppose impeded and interfered with Deputy United States Marshal Propostsis and Special Agen Nelson and Brasech of the Federal Drug Enforcement Administration while said officer were engaged in the performance of their official duties; in violation of Title 18, United States Code, Sections 111 and 1114; as charged in Ct. I of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrar was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years.

SPECIAL CONDITIONS OF PROBATION

A true copy in 1 sheet(s) of the record in my custody.
CERTIFIED 01-27, 19 77
Francis E. Dosal, Clerk
BY: Deputy Clerk

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on th reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revok probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

EXHIBIT E.

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

Edward J. Devitt

DATE June 21, 1976

PROBATION

32

(10)

26

it to jury, in prosecution for conspiracy to distribute and possession with intent to distribute cocaine hydrochloride and cocaine base, in which defendants ultimately received sentences in excess of statutory maximum for an unspecified quantity of drugs, resulted in imposition of sentence for crime with which defendants were never charged, and constituted reversible plain error; error seriously affected the fairness, integrity, or public reputation of proceedings, regardless of whether threshold drug quantity was established by evidence. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), (b)(1)(C), 406, 21 U.S.C.A. §§ 841(a)(1), (b)(1)(C), 846.

7. **Indictment and Information** ⇐113
Jury ⇐34(1)

District court impermissibly sentenced defendants for a crime with which they were never charged, and thus exceeded its jurisdiction, when it sentenced defendants convicted of conspiring to distribute cocaine hydrochloride and cocaine base to terms in excess of statutory maximum for an unspecified quantity of drugs, even though indictment did not charge a specific threshold drug quantity, and issue of drug quantity was not submitted to jury and proved beyond a reasonable doubt. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), (b)(1)(C), 406, 21 U.S.C.A. §§ 841(a)(1), (b)(1)(C), 846.

8. **Indictment and Information** ⇐171

An indictment found by a grand jury is indispensable to the power of the court to try defendant for the crime with which he was charged, and a court cannot permit a defendant to be tried on charges that are not made in the indictment against him.

9. **Indictment and Information** ⇐60

When an indictment fails to set forth an essential element of a crime, the court has no jurisdiction to try a defendant under that count of the indictment.

10. **Sentencing and Punishment** ⇐225

A district court cannot impose a sentence for a crime over which it does not even have jurisdiction to try a defendant.

11. **Indictment and Information** ⇐113

The indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted, because judge's role in sentencing is constrained at its outer limits by the facts alleged in the indictment and found by the jury.

12. **Indictment and Information** ⇐113
Sentencing and Punishment ⇐225

Because an indictment setting forth all the essential elements of an offense is both mandatory and jurisdictional, and a defendant cannot be held to answer for any offense not charged in an indictment returned by a grand jury, a court is without jurisdiction to impose a sentence for an offense not charged in the indictment.

13. **Criminal Law** ⇐1167(1)

A reviewing court may not speculate about whether a grand jury would or would not have indicted a defendant for a crime with which he was never charged, since a district court lacks jurisdiction to try a defendant on a charge for which he was not indicted.

14. **Grand Jury** ⇐42

Grand jury is not bound to indict in every case where a conviction can be obtained.

15. **Grand Jury** ⇐1
Jury ⇐1

The grand jury and petit jury are separate and independent, and the petit jury cannot usurp the role of the grand jury.

not saved by the fact that a bill of particulars in the form of a letter from the prosecutor informed the defendant of the events surrounding the incident which led to the charges against him, nor by the fact that the trial judge correctly instructed the petit jury that force was an essential element of the offense, nor by the reference in the indictment to the applicable statute.

Reversed

1. Post Office ⇐27

Use of force is an essential element of offense of forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with a United States postal inspector engaged in performance of his official duties. 18 U.S.C.A. §§ 111, 1114.

2. Indictment and Information ⇐60

An indictment must fairly state all the essential elements of the offense if it is to be sufficient.

3. Indictment and Information ⇐60

Omissions which are fatal to an indictment are those of essential elements "of substance," rather than "of form only."

4. Indictment and Information ⇐75(1)

In determining whether an essential element has been omitted from description of offense in indictment, a court will not insist that any particular word or phrase appear, and element may be alleged "in any form" which substantially states element.

5. Post Office ⇐27

Element of force in offense of forcibly assaulting, resisting, opposing, impeding, intimidating or interfering with a United States postal inspector engaged in the performance of his official duties is plainly of substance and not of form only. 18 U.S.C.A. §§ 111, 1114.

6. Indictment and Information ⇐121.5
Post Office ⇐48(7½)

Indictment charging defendant with having wilfully, knowingly, and unlawfully resisted, opposed, impeded, intimidated and interfered with a United States postal inspector engaged in the performance of his official duties was fatally defective for failure to utilize the word "forcibly" or a word of similar import as an element of the offense, and was not saved by the fact that a bill of particulars in the form of a letter from the prosecutor informed the defendant of the events surrounding the incident which led to the charges against him, nor by the fact that the trial judge correctly instructed the petit jury that force was an essential element of the offense, nor by the reference in the indictment to the applicable statute. 18 U.S.C.A. § 111.

See publication Words and Phrases for other judicial constructions and definitions.

7. Indictment and Information ⇐2(2)

Beyond notice and double jeopardy, there is a distinct constitutional right, protected by the Fifth Amendment, that a defendant be tried upon charges found by a grand jury. U.S.C.A.Const. Amend. 5.

8. Indictment and Information ⇐93, 108

Under rule requiring that an indictment be a plain, concise and definite written statement of the essential facts constituting the offense and that it state for each count the citation of the statute which defendant is alleged therein to have violated, the statement of the essential facts and the citation of the statute are separate requirements and not a restatement of one another; an indictment that merely charges that a defendant violated a cited statute will not suffice. Fed.Rules Crim.Proc. rule 7, 18 U.S.C.A.

9. Criminal Law ⇐1032(5)

That sufficiency of indictment was not challenged until appeal from conviction was not a basis for denying review where indictment omitted an essential element of offense and, thus, became so defective that by no reasonable construction could it be said to charge an offense for which defendant could be convicted.

10. Post Office ⇐49(8)

Evidence indicating a forcible interference with postal inspectors by persons other than defendant and further indicating defendant's wilful and knowing association with such activity, his participation in activity as something he wished to bring about,

ed to the petition as Exhibits 1 through 26; July of 1996 for those appended as Exhibits 27 through 29; and August of 1996 for those appended as Exhibits 30 through 36. Farmers Co-op hedged these purchases of grain by buying "short" positions in the same quantities on the Chicago Board of Trade (CBOT). Farmers Co-op alleges that it incurred hedge losses with the unprecedented rise in corn prices in late 1995 and early 1996, believing that Doden would deliver on the HTAs.

The petition further alleges that Farmers Co-op agreed to Doden's request, made in February of 1996, that Doden be allowed to sell his 1995 corn and soybeans on the cash market at a price more advantageous to Doden than that available under the HTAs. In return, Doden allegedly agreed to pay a cash payment of all of the proceeds from the sale of Doden's 1995 corn, after payment of Doden's lien creditors, and to deliver and sell his 1996 and subsequent years' corn and soybeans to Farmers Co-op up to the total under the HTAs of 460,000 bushels of corn and 40,000 bushels of soybeans. Farmers Co-op alleges that Doden did make a payment in accordance with this agreement in May of 1996. Farmers Co-op alleges that Doden next requested that Farmers Co-op buy in the short positions on the CBOT it had taken in reliance on Doden's sales of corn and soybeans. Farmers Co-op alleges that it bought in these hedges and incurred a loss of approximately $3 million on the corn and soybeans to be delivered on the HTAs. Doden then repudiated the HTAs by certified letter from counsel.

III. LEGAL ANALYSIS

A. Removal Jurisdiction

[2] The federal district courts have always been courts of limited jurisdiction. *See* U.S. Const., Art. III, § 1. "Federal courts are not courts of general jurisdiction and have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Marine Equip. Management Co. v. United States*, 4 F.3d 643, 646 (8th Cir.1993) (citing *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501, *reh'g denied*, 476 U.S. 1132, 106 S.Ct. 2003, 90 L.Ed.2d 682 (1986), citing in turn *Marbury v. Madison*, 1 Cranch 137 [5 U.S. 137], 2 L.Ed. 60 (1803)); *see also Neighborhood Transp. Network, Inc. v. Pena*, 42 F.3d 1169, 1171 (8th Cir.1994) (federal court jurisdiction is limited by Article III of the Constitution). A federal court therefore has a duty to assure itself that the threshold requirement of subject matter jurisdiction has been met in every case. *Bradley v. American Postal Workers Union, AFL–CIO*, 962 F.2d 800, 802 n. 3 (8th Cir.1992) (citing *Sanders*, *infra*); *Thomas v. Basham*, 931 F.2d 521, 523 (8th Cir.1991); *Jader v. Principal Mut. Life Ins. Co.*, 925 F.2d 1075, 1077 (8th Cir.1991); *Barclay Square Properties v. Midwest Fed. Sav. & Loan Ass'n*, 893 F.2d 968, 969 (8th Cir.1990); *Sanders v. Clemco Indus.*, 823 F.2d 214, 216 (8th Cir.1987).

[3] "The parties ... may not confer subject matter jurisdiction upon the federal courts by stipulation, and lack of subject matter jurisdiction cannot be waived by the parties or ignored by the court." *Pacific Nat'l Ins. Co. v. Transport Ins. Co.*, 341 F.2d 514, 516 (8th Cir.), *cert. denied*, 381 U.S. 912, 85 S.Ct. 1536, 14 L.Ed.2d 434 (1965); *see also Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 25, 109 S.Ct. 2273, 2287, 105 L.Ed.2d 1 (1989) (Stevens, J., concurring) ("[T]he cases are legion holding that a party may not waive a defect in subject-matter jurisdiction or invoke federal jurisdiction simply by consent," citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 377 n. 21, 98 S.Ct. 2396, 2404 n. 21, 57 L.Ed.2d 274 (1978); *Sosna v. Iowa*, 419 U.S. 393, 398, 95 S.Ct. 553, 556–57, 42 L.Ed.2d 532 (1975); *California v. LaRue*, 409 U.S. 109, 112 n. 3, 93 S.Ct. 390, 394 n. 3, 34 L.Ed.2d 342 (1972); *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17–18, and n. 17, 71 S.Ct. 534, 541–542, and n. 17, 95 L.Ed. 702 (1951); *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S.Ct. 162, 165, 79 L.Ed. 338 (1934); *Jackson v. Ashton*, 8 Pet. 148, 149 [33 U.S. 148, 149], 8 L.Ed. 898 (1834)); *Lawrence County v. South Dakota*, 668 F.2d 27, 29 (8th Cir.1982) ("[F]ederal courts operate within jurisdictional constraints and ... parties by their consent cannot confer subject matter jurisdiction upon the federal courts.").

EXHIBIT B.