

February 15, 2005

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

CLERK OF THE COURT

708 Warren E. Burger Federal Building
316 North Robert Street
St. Paul, Minnesota 55101
U.S. CERTIFIED MAIL NO. 7001-0320-0005-5878-9876

RE: LAMBROS vs. USA, Criminal Number 4-89-82(5)(DSD)

Dear Clerk:

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

1. MOTION FOR RELIEF FROM JUDGMENT OR ORDER, DUE TO INTERVENING CHANGE IN CONTROLLING LAW, **CRAWFORD vs. WASHINGTON**, 158 L.Ed.2d 177 (March 08, 2004), UNDER ANY ONE OF THREE SEPARATE SUBSECTIONS OF FEDERAL RULES OF CIVIL PROCEDURE 60(b) - SECTIONS ONE (1), FIVE (5), AND SIX (6).
DATED: FEBRUARY 15, 2005.

Please contact me if I have not followed any of the filing rules.

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

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

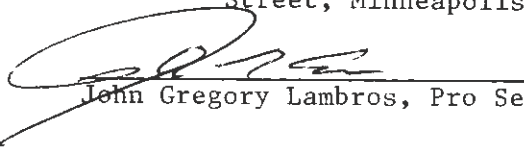
Sincerely,


John Gregory Lambros, Pro Se

CERTIFICATE OF SERVICE

I declare under the penalty of perjury that a true and correct copy of the above listed document/motion was mailed within a stamped addressed envelope from the USP Leavenworth mailbox/mailroom on this **15th day of February, 2005**, to:

1. The Clerk of the Court as addressed above;
2. U.S. Attorney's Office, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415


John Gregory Lambros, Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN GREGORY LAMBROS, * CIVIL NO. _____
Petitioner, *
vs. * Criminal No. 4-89-82(05)
*
UNITED STATES OF AMERICA, * AFFIDAVIT FORM
Defendant. *

MOTION FOR RELIEF FROM JUDGMENT OR ORDER,
DUE TO INTERVENING CHANGE IN CONTROLLING LAW,
CRAWFORD vs. WASHINGTON, 158 L.Ed.2d 177 (March 08,
2004), UNDER ANY ONE OF THREE SEPARATE SUB-
SECTIONS OF FEDERAL RULES OF CIVIL PROCEDURE
60(b) - SECTIONS ONE (1), FIVE (5), AND SIX (6).

NOW COMES Petitioner, JOHN GREGORY LAMBROS, Pro Se, (hereinafter Movant) and requests this Court for relief from judgment or order, in this above-entitled action, due to the United States Supreme Court decision on March 08, 2004 in CRAWFORD vs. WASHINGTON, 124 S.Ct. 1354, 158 L.Ed.2d 177, which held:

the Confrontation Clause bars the state from introducing into evidence out-of-court statements which are testimonial in nature unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness regardless of whether the statements are deemed reliable.

I. THE FOLLOWING COURTS HAVE RULED CRAWFORD RETROACTIVE:

1. RICHARDSON vs. NEWLAND, 2004 U.S. Dist Lexis 21910 (EDCAL 2004) * ruled CRAWFORD RETROACTIVE to federal habeas corpus calling it a "bedrock principle that dates back to Roman times." A few other courts have APPLIED CRAWFORD without a discussion of retroactivity. COOPER vs. McGRATH, 314 F.Supp.2d 985, 987; LIGGINS

1.

* RICHARDSON vs. NEWLAND, 342 F.Supp.2d 900, 924 (E.D.Cal. 2004)

vs. GRAVES, 2004 U.S. Dist. Lexis 4889 (SD Iowa).

II. A CHANGE IN THE LAW CAN BE THE BASIS FOR RULE 60(b) RELIEF:

2. The Eighth Circuit and other courts have stated, "A CHANGE IN THE LAW CAN IN APPROPRIATE CIRCUMSTANCES BE THE BASIS FOR RULE 60(b) RELIEF." See, BENSON vs. ARMONTROUT, 767 F.2d 454, 455 (8th Cir. 1985); COX vs. WYRICK, 873 F.2d 200, Head Note 1 (8th Cir. 1989; BEN HUR CONST. CO. vs. GOODWIN, 116 F.R.D. 281, affirmed 855 F.2d 859 (8th Cir. 1988)(Decision of the Supreme Court of the U.S. or U.S. Court of Appeals may provide extraordinary circumstances for granting relief from judgment under Rule 60(b)(6) due to change in law); BRADLEY vs. RICHMOND SCHOOL BOARD, 416 U.S. 696, 714, 40 L.Ed.2d 476, 489-490 (1974)(Court has duty to apply supervening rule of law despite its prior decisions to the contrary when the new legal rule is valid and applicable to the issues of the case.); THE SCHOONER PEGGY, 5 U.S. (1 Cranch) 103, 2 L.Ed. 49 (1801)(A court will apply the new rule even if it was announced while the case is on appeal.); AGOSTINI vs. FELTON, 138 L.Ed.2d 391, 395 (1997)(allowing relief under Rule 60(b)(5) to alter permanent injunction in light of Supreme Court's decision to overrule earlier constitutional precedent on which injunction was based.); and GONZALEZ vs. SECRETARY OF DEPT. OF CORRECTIONS, 366 F.3d 1253, 1309 (11th Cir. 2004)("What Gonzalez' Rule 60(b)(6) motion alleges, in so many words, is that 'an intervening change in the controlling law dictates a different result.' I suggest that Rule 60(b) is the PERFECT VEHICLE for invoking the INTERVENING-CHANGE-IN-THE-LAW EXCEPTION to the mandate rule. In fact, I can think of no other procedural rule that is as tailored made for this situation as Rule 60(b)(6)."). (emphasis added).

3. United States Supreme Court Justice STEVENS offered his opinion as to the use of a **RULE 60(b) MOTION** in ABDUR'RAHMAN vs. BELL, 154 L.Ed.2d 501, 505 (2002):

..., while a **RULE 60(b) MOTION** is designed to cure

PROCEDURAL VIOLATIONS IN AN EARLIER PROCEEDING - here, a habeas corpus proceeding - that raise questions about that PROCEEDING'S INTEGRITY. Id. at 505. (emphasis added).

4. This Court is bound by the Eighth Circuit precedent in this action, which clearly states, "Guinan correctly points out that neither BOLDER nor BLAIR mandates that all Rule 60(b) motions in habeas cases be treated as subsequent habeas petitions. We do not rule out the possibility that a habeas case may present circumstances in which a Rule 60(b) motion might properly be examined as such rather than a subsequent habeas petition." See, GUINAN vs. DELO, 5 F.3d 313, 316 (8th Cir. 1993). Also see, HOOD vs. U.S., 342 F.3d 861, 864 (8th Cir. 2003)(The District Court, however, is bound, as are we, to apply the precedent of this Circuit).

III. BACKGROUND FACTS:

5. On May 17, 1989, **JOHN J. BOULGER**, Police Officer with the City of Minneapolis and assigned to the Drug Enforcement Administration Task Force, testified before the United States Grand Jury for the District of Minnesota in USA vs. LAMBROS, 4-89-82(5), stating:

a. "The informant who was utilized in the investigation, at least one of them, is a gentleman by the name of DONALD HENDRICKSON, correct?" See, Page 13 of May 17, 1989 TRANSCRIPT, EXHIBIT A.

b. "I'll show you what has been marked as Grand Jury EXHIBIT G. Is this a transcript of some of the testimony of DONALD HENDRICKSON?"

"Yes, Sir."

"This would not be a transcript that you would have copies of but I'll simply mark a copy here."

"Yes, sir."

"Mr. Foreperson, I would ask that this Grand Jury receive this

transcript as it was a transcript of a proceeding before another Grand Jury."

"Okay."

"The **INFORMANT, DONALD HENDRICKSON**, as I understand it, had contact with Lawrence Pebbles?"

"Yes."

"**JOHN LAMBROS?**"

"Yes."

"And also had contact with Tracy Penrod or Tracy Greer?"

"That's correct."

Page 14 of May 17, 1989 TRANSCRIPT, EXHIBIT A.

c. "Earlier, we had talked about your use of an **INFORMANT** by the name of DONALD HENDRICKSON during the course of this investigation. As I understand it, MR. HENDRICKSON had some contact with **JOHN LAMBROS**, correct?"

"He did."

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

"That's correct. They met on three (3) separate occasions and discussed **MARIJUANA TRANSACTIONS** and other drug transactions."

John J. Boulger, testifies as to LAMBROS' and **DON HENDRICKSON's** relationship from pages 33 thru 36, which includes the above. See, EXHIBIT A.

6. On January 8, 1993, **JOHN J. BOULGER**, testified at the trial of U.S.A. vs. LAMBROS, 4-89-82(05), stating:

a. "At some point in this investigation, **MR. DONALD HENDRICKSON**, **WHO WAS YOUR INFORMANT**, - -"

"Yes, sir."

"- - attempted to make a drug deal with Mr. Lambros?"

"That's correct. They met on a number of occasions."

"Could you tell us, in the time frame between the time of Pebbles' arrest in February, 1988 and the beginning of this knowledge that you had, when that was?"

"The two (2) specific meetings that I recall were both in January of 1988, January 12th and I believe January 28th. Mr. HENDRICKSON and Mr. Lambros met and discussed drug transactions involving **MARIJUANA AND COCAINE.**"

EXHIBIT B. (Trial Transcript Page 529)

b. "Mr. HENDRICKSON was never able to get Mr. Lambros to actually do a drug deal?"

"No, sir. There was discussion of amounts, the type of drug, cocaine, a place to make an exchange of kilograms, but it never took place."

EXHIBIT B. (Trial Transcript Page 530)

c. "On both occasions, though, it was Mr. HENDRICKSON that approached Mr. Lambros, wasn't it?"

"Yes, sir, that's correct."

"And that was at your direction?"

"Myself and other agents, yes."

"Were those conversations monitored?"

"The one in particular where I spoke about him being searched, Mr. HENDRICKSON had a recording device on him in a jacket pocket that Mr. Lambros missed when he searched him. He fanned his jacket back, patted him down, his body, his pants, all the way down to his shoes. There was a recording made of that. And at other meetings ---" EXHIBIT B. (Trial Transcript Page 531)

d. "The two (2) meetings I recall were the dates I just told you. There were OTHER MEETINGS, and they may have been in December or earlier in January."

"And in none of these instances were any drugs exchanged?"

"Yes, Mr. HENDRICKSON HAD PROVIDED A SAMPLE OF MARIJUANA TO Mr. Lambros for his purpose to test it to see if it was [EXHIBIT B. Trail Trans-

cript Page 532] marketable. They spoke later on about that at the meeting on the 22nd at the restaurant."

"SO MR. HENDRICKSON GAVE MR. LAMBROS SOME MARIJUANA?"

"THAT'S CORRECT. It was a sample provided by Mr. HENDRICKSON to Mr. Lambros so Mr. Lambros could see if he could market larger quantities."

"And Mr. Lambros never returned the sample, is that right?"

"He never returned the sample, and there was discussion about what a third party thought of the sample."

EXHIBIT B. (Trial Transcript Page 533)

e. DEA Agent John J. Boulger also testified that Mr. HENDRICKSON met Mr. Lambros and tape-recorded telephone conversations with Lambros for the DEA. Transcripts of the taped-telephone conversations were produced during trial. See, Trial Transcript Pages 859 thru 863.

7. During the trial, government witness TRACY GREER testified she made a cocaine delivery to DONALD HENDRICKSON for Pebbles. See, Trial Transcript Page 286.

8. During the trial, Lambros' attorney Charles Faulkner informs the court that he is unable to locate government witness DONALD HENDRICKSON so he could interview and subpoena him to trial. The government confirms same. See, Trial Transcript Pages 639 thru 642.

9. During the trial of Lambros, Agent JIM HESSEL, Minnesota Bureau of Criminal Apprehension, testified about REBECCA LEWIS and ROGER LEWIS working for the Minnesota Bureau of Criminal Apprehension and the Drug Enforcement Agency and assisting in the arrest of John Gregory Lambros. See, Trial Transcript Pages 673 thru 685.

10. During the trial, Lambros' attorney Charles Faulkner informs the court that he is unable to locate government witnesses REBECCA LEWIS and ROBER LEWIS so he could interview and subpoena them to trial. The government confirms same. See, Trail Transcript Pages 639 thru 642.

IV. DISCUSSION - WHETHER ADMISSION OF OUT-OF-COURT STATEMENTS VIOLATED CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT. See, CRAWFORD vs. WASHINGTON, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

11. The District Court's admission of out-of-court statements from DONALD HENDRICKSON, REBECCA LEWIS, and ROGER LEWIS to the police during the trial of LAMBROS, violated the confrontation clause as the out-of-court statements were "TESTIMONIAL IN NATURE", as HENDRICKSON, REBECCA LEWIS, and ROGER LEWIS (a) were unavailable to testify at the time that their hearsay statements were admitted into evidence, and (b) whose hearsay statements were not subject to cross examination by Lambros' attorney at the time the statements were made. See, CRAWFORD, 158 L.Ed.2d at 203 ("In this case, the State admitted Sylvia's statement against petitioner, despite the fact that he had no opportunity to cross-examine her. That alone is sufficient to make out a violation of the Sixth Amendment. Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: CONFRONTATION.") (emphasis added)

12. The Supreme Court further stated in CRAWFORD, "We leave for another day any effort to spell out a comprehensive definition of 'TESTIMONIAL.' Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and TO POLICE INTERROGATIONS. These are the modern practices with closest kinship to the abuses at which the Confrontation Clause was directed." See, CRAWFORD, 158 L.Ed.2d at 203. (emphasis added).

13. Therefore, the fairness and integrity of the proceedings in this case were seriously affected by the unconstitutional admissions of out-of-court statements from DONALD HENDRICKSON, REBECCA LEWIS, and ROGER LEWIS.

14. An EVIDENTIARY HEARING IS REQUIRED, for and on the record to verify all statements in fact of: (a) Donald Hendrickson; (b) Rebecca Lewis; and (c) Roger Lewis, to grand juries, former trials and to police interrogations, that were entered as original statements by testifying police to explain the facts of the case in this action.

V. RULE 60(b) FEDERAL RULES OF CIVIL PROCEDURE:

15. Movant Lambros believes he has showed a mark change in the applicable law and now it is necessary to determine whether any of the three (3) clauses of Rule 60(b) are the proper vehicle for this particular motion.

16. Movant is requesting this court to review the following procedural issues of whether a change in law is remediable under any of the three (3) subsections of Rule 60(b), which this Movant relies. Movant FIRST claims that a change in law constitutes a "MISTAKE" within the meaning of Rule 60(b)(1). Therefore, to correct that mistake and remove the judgment(s) previously entered herein. SECOND, after CRAWFORD, it is no longer equitable that the judgment in this action have prospective application and Movant is entitled to relief from judgment under Rule (b)(5). Lastly, in the event that this court finds that relief from judgment is not appropriate under either subsection one (1) or subsection five (5) of Rule 60(b), Movant invokes subsection six (6) of that Rule which allows for relief from operation of a final judgment for "any other reason[.]" See, Fed.R.Civ.P. 60(b)(6).

17. Movant understands, Rule 60(b)(6) ONLY applies if the reasons offered for relief from judgment are NOT covered under the more specific provisions of Rule 60(b)(1) thru (5). See, LILJEBERG vs. HEALTH SERV. ACQUISITION CORP., 100 L.Ed.2d 855, 874-875 and fn. 11. Based upon the mutual exclusivity doctrine, this court must first consider whether either Rule 60(b)(1) or Rule 60(b)(5) govern this motion.

V. (A): RULE 60(b)(1) -- "MISTAKE"

18. Movant believes that Rule 60(b)(1) may be utilized by this Court to remedy the change in controlling law in this action. Rule 60 does not independently define "MISTAKE," but the word "can easily be interpreted to encompass errors in law." See, KEVIN PARKER, Note, RELIEF FROM FINAL JUDGMENT UNDER RULE 60(b)(1) DUE TO JUDICIAL ERRORS OF LAW, 83 Mich. L.Rev. 1571, 1572 (1985)("Judicial Errors"). "Errors in law," in turn, have been held to include disregarding a change in controlling law. See, *Id.* at 1576 (citing, SCHILDHAUS vs. MOE, 335 F.2d 529 (2nd Cir. 1964). Courts are split as to whether Rule 60(b)(1) is the proper procedural vehicle when a party is claiming an INTERVENING CHANGE IN CONTROLLING LAW. In TARKINGTON vs. U.S. LINES CO., 222 F.2d 358, 359 (2nd Cir. 1955), the Second Circuit held that when the Supreme Court rendered a decision, eleven days after entry of judgment, which "conflict[ed] with the case on which the trial judge relied in directing a verdict, th[at] ... judge should have treated plaintiff's motion as [one] under Fed. Rules Civ. Proc. Rule 60(b), to correct the mistake."

V. (B): RULE 60(b)(5) -- "PROSPECTIVE APPLICATION"

19. The two (2) requirements for obtaining relief from final judgment under Rule 60(b)(5) are that (1) the judgment has prospective application and (2) it is no longer equitable that it should so operate. See, 7 J. Moore & J. Lucas, Moore's Federal Practice 60.26[4] (2nd ed. 1982).

20. The Fifth Circuit in KIRKSEY vs. CITY OF JACKSON, 714 F.2d 42, 43 (5th Cir. 1983) indicated that Rule 60(b)(5) relief may be justified if the law changes subsequent to the initial decision and if the parties would be bound by the previous judgment by *res judicata*: "If dismissal would bar a new and independent action between the same parties based on the same claims, then it would

have 'prospective application' by virtue of the continuing effect of the bar."

V. (C): RULE 60(b)(6) -- "EXTRAORDINARY CIRCUMSTANCES"

21. Rule 60(b)(6) provides for relief from FINAL JUDGMENT where there is "any other reason justifying relief from the operation of the judgment." Rule 60(b)(6) "confers broad discretion on the trial court to grant relief when "appropriate to ACCOMPLISH JUSTICE." (emphasis added) INTERNATIONAL CONTROLS CORP. vs. VESCO, 556 F.2d 665, 668 n.2 (2nd Cir. 1977), cert. denied, 54 L.Ed.2d 758 (1978) (quotations omitted) and KLAPPROTT vs. U.S., 335 U.S. 601, 615 (1949). "It is 'properly invoked where there are extraordinary circumstances,' [citations omitted] or where the judgment may work an EXTREME AND UNDUE HARDSHIP, [citations omitted] and 'should be liberally construed when SUBSTANTIAL JUSTICE WILL THUS BE SERVED.'" See, MATARESE vs. LeFEVRE, 801 F.2d 98, 106 (2nd Cir. 1986), cert. denied, 94 L.Ed.2d 523 (1987):

"A postjudgment change in law having retroactive application may, in special circumstances, CONSTITUTE AN EXTRAORDINARY CIRCUMSTANCE WARRANTING VACATION OF A JUDGMENT." (emphasis added)

See, MATARESE, 801 F.2d 98, 106, citing, inter alia, PIERCE vs. COOK & CO., 518 F.2d 720 (10th Cir. 1975), cert.denied, 47 L.Ed.2d 89 (1976); McGRATH vs. POTASH, 199 F.2d 166 (D.C. Cir. 1952); see also, ADLER vs. BERG HARMON ASSOC., 790 F.Supp. 1235, 1245 n.10 (S.D.N.Y. 1992).

22. OF GREAT IMPORTANCE is the Second Circuit's statement in MATARESE, vs. LeFEVRE, 801 F.2d 98, 106 (1986):

"We think it particularly appropriate for the district court to ENTERTAIN A RULE 60(b)(6) MOTION ON GROUNDS OF A RETROACTIVE CHANGE OF LAW IN THE CONTEXT OF A HABEAS CORPUS PROCEEDING, IN WHICH '[C]ONVENTIONAL NOTIONS OF FINALITY OF LITIGATION HAVE NO PLACE." SANDERS vs. U.S., 373 U.S. 1, 8, 83 S.Ct. 1068, 1073, 10 L.Ed.2d 148 (1963); id. at 17, 83 S.Ct. at 1078 (court has discretion to grant

a hearing on a successive petition for **HABEAS CORPUS** upon a showing that there has been an intervening change in the law)."

23. The Eighth Circuit stated that a "Change in law having retroactive application may, in appropriate circumstances, provide basis for granting relief under Rule 60(b). See, COX vs. WYRICK, 873 F.2d 200, 201 (8th Cir. 1989). Also see, BENSON vs. ARMONTROUT, 767 F.2d 454, 455 (8th Cir. 1985).

ADDENDUM

THE FOLLOWING INFORMATION IS TO BE INCORPORATED WITHIN SECTIONS III. "BACKGROUND FACTS" AND SECTION IV. "DISCUSSIONS - WHETHER ADMISSION OF OUT-OF-COURT STATEMENTS VIOLATED CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT," PAGES THREE (3) THRU EIGHT (8).

24. On January 11, 1993, **EDDIE FISK**, Special Agent with the Criminal Investigation Division of the Internal Revenue Service, testified at the trial of Movant in this action. See Trial Transcripts pages V-610 thru V-635. Eddie Fisk stated the following facts during trial:

a. That he worked with agents of the DEA in investigating John G. Lambros, Lawrence Randall Pebbles, Roger Lewis, and Pamela Lemon.

b. "Did you ever talk to a Mr. David Pagel, who was Mr. Lambros' employer? Yes, I did. When was that, sir? I believe I spoke with him on several occasions over a period of maybe two (2) years. When was the first time, approximately, that you talked to Mr. Pagel, sir? Transcript Page 617 I believe it was in 1987. What caused you to talk to Mr. Pagel?" Transcript Page 618.

c. "Now, who was his broker at First Preferred? I believe it was Mr. Lambros. And did any charges against Mr. Lambros result out of these

dealings regarding Mr. Lewis? None that I know of. Was Mr. Lewis ever charged, to your knowledge? I don't know that." Transcript Page 619.

d. "Was Mr. Pagel cooperative with you, sir? Yes, he was." Transcript page 619.

e. "Did he open up the records of First Preferred regarding this transaction? Yes, he did. And were you satisfied that the information you received from him was the complete information that was available at First Preferred? Yes, I was. Did you, at any time during the course of this investigation, send anyone to talk to John Lambros about Mr. Lewis? I don't believe so. You said you had several meetings with Mr. Pagel, is that correct? Yes. I think you've described to us, sir, generally what the investigation determined. Did you learn anything else in any of the other meetings relating to Mr. Lambros? Well, I obtained additional financial records on accounts of Mr. Lambros from Mr. Pagel. And specifically what were those accounts from? I believe at one time I received brokerage statements on nearly all the customers of Mr. Lambros. Did Mr. Lambros appear, at the time that you looked at First Preferred, to have an active brokerage business? Yes, I believe it was." Transcript Page 620.

f. "After reviewing this material and other information you would have gathered during the course of your investigation, did you come to some conclusions as to what was going on in connection with the **PAMELA LEMON ACCOUNT AT FIRST PREFERRED INVESTMENT**? I did. And that would also involve talking to Pamela Lemon. And are you familiar with the term "money laundering"? Yes, I am." Trial Transcript page 627.

25. Assistant U.S. Attorney DOUGLAS R. PETERSON, stated to the jury during the above-entitled trial, the following:

a. That Mr. Lambros was involved in MONEY LAUNDERING ACTIVITIES in connection with his employment at First Preferred Investment and offered alleged trade slips, Defense Exhibit 1 and 2, as to same. The records **DAVID PAGEL** gave and verified for the government when he assisted in the investigation of John

G. Lambros while he was president of First Preferred Investments. See, TR. Page 886.

26. During the trial of Movant, both Movant and his Attorney tried to locate **DAVID PAGEL** (the past president of First Preferred Investments) to no avail. Of interest is that fact **DAVID PAGEL's** name appeared within the witness list of the government. Movant's Attorney Charles Faulkner never interviewed or cross examined **DAVID PAGEL**.

27. The District Court's admission of out-of-court statements and EXHIBITS furnished from DAVID PAGEL to the police and IRS. during the trial of LAMBROS, violated the confrontation clause as the out-of-court statements were "TESTIMONIAL IN NATURE," as DAVID PAGEL (a) was unavailable to testify at the time that their hearsay statements and exhibits were admitted into evidence, and (b) whose hearsay statements were not subject to cross examination by Lambros' attorney at the time the statements were made and exhibit offered. See, CRAWFORD, 158 L.Ed.2d at 203.

CONCLUSION

28. This Court has jurisdiction to pursue a RULE 60(b) MOTION to reopen this case that had been reviewed on appeal. See, STANDARD OIL CO. vs. U.S., 50 L.Ed.2d 21 (1976). In that case, the Supreme Court made clear that a party wishing to pursue a Rule 60(b) motion to reopen a case that had been reviewed on appeal was not required to obtain leave of the appellate court or a withdrawal of the appellate court's mandate before proceeding in the district court. The court reasoned that the district judge would not be flouting the existing mandate by acting on the motion since the appellate decision related only "to the record and issues then before the court, and [did] not purport to deal with possible later events." Id. at 23.

29. THIRD CIRCUIT GRANTS COA ON RETROACTIVITY OF CRAWFORD vs.

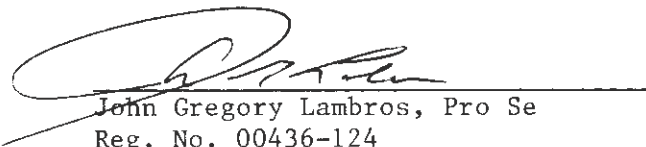
WASHINGTON: The January, 2005 NEWSLETTER of Attorney Cheryl J. Sturm, Chadds Ford, PA. reported that "COA granted on the RETROACTIVITY of CRAWFORD vs. WASHINGTON and other issues." See, MASON vs. KYLER, CTA3 No. 03-4724.

30. Movant respectfully requests this Court to vacate judgment due to an intervening change in controlling law under any one of three separate subsections of Federal Rules of Civil Procedure 60(b) - sections one (1), five (5), and/or six (6).

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

EXECUTED ON: **FEBRUARY 15, 2005**

Respectfully submitted,



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

Web site: www.brazilboycott.org

BEFORE A GRAND JURY OF THE UNITED STATES
FOR THE DISTRICT OF MINNESOTA

Wednesday
May 17, 1989
11:51 a.m.

TESTIMONY OF:

JOHN J. BOULGER

The following is a transcript of testimony of the above witness before a United States Grand Jury for the District of Minnesota on this 17th day of May, 1989, in the United States Courthouse at St. Paul, Minnesota, commencing at 11:51 a.m.

APPEARANCE:

DOUGLAS R. PETERSON
ASSISTANT UNITED STATES ATTORNEY
District of Minnesota

ORIGINAL

43 Total pages
CATHERINE FAHY
SYNDICATED REPORTERS
1024 GRAIN EXCHANGE BUILDING
MINNEAPOLIS, MINNESOTA 55415
612-333-6549

EXHIBIT A.

EXHIBIT A.

SYNDICATED REPORTERS

- 1
- 2
- 3 Whereupon,
- 4
- 5 called as a witness herein, having been first duly sworn
- 6 by the foreperson of the Grand Jury, was examined and
- 7 testified as follows:
- 8 THE FOREPERSON: Will you please state your
- 9 name and spell it for the court reporter.
- 10 THE WITNESS: John J. Boulger, B-o-u-l-g-e-r.
- 11
- 12 EXAMINATION
- 13 BY MR. PETERSON:
- 14 Q Mr. Boulger, what do you do for a living?
- 15 A I'm a police officer with the City of Minneapolis and
- 16 assigned to the Drug Enforcement Administration Task
- 17 Force.
- 18 Q How long have you worked in the Minneapolis Police
- 19 Department?
- 20 A Twenty-three years.
- 21 Q How long have you worked in narcotics investigations?
- 22 A Eighteen years.
- 23 Q About how many narcotics investigations would you say
- 24 you've participated in?
- 25 A Thousands.

EXHIBIT A.

B.N.G.
13

1 for us. We utilized electronic surveillance videotape
2 equipment. We recorded telephone calls with the consent
3 of one party. There was no wire tapping done in this
4 case, but the Court allows us to record telephone calls if
5 one of the two parties involved in the telephone call
6 consents to it. So we used tape recorded conversations
7 made by an informant with Mr. Pebbles to get information
8 as to what was going on in the investigation.

9 We utilized subpoenas to obtain travel records,
10 documents regarding automobiles owned by various people
11 within the group.

12 We used subpoenas to get hotel records to show
13 where these people were, when they were there, and what
14 calls they were making from the hotel rooms while they
15 were staying in these hotel rooms.

16 And these things allowed us to kind of put
17 together a general picture of who was involved, what their
18 roles were, what the time frame was for a particular trip
19 that Mr. Pebbles or Miss Greer would make, so we could
20 kind of get an overall picture as to who was in the
21 organization, how frequently they were doing this and how
22 much drugs were involved.

23 Q The informant who was utilized in the investigation,
24 at least one of them, is a gentleman by the name of Donald
25 Hendrickson, correct?

SYNDICATED REPORTERS

EXHIBIT A.

17

1 A That's correct.

2 Q I'll show you what has been marked as Grand Jury
3 Exhibit G. Is this a transcript of some of the testimony
4 of Donald Hendrickson?

5 A Yes, sir.

6 MR. PETERSON: This would not be a transcript
7 that you would have copies of but I'll simply mark a copy
8 here.

9 THE WITNESS: Yes, sir.

10 MR. PETERSON: Mr. Foreperson, I would ask that
11 this Grand Jury receive this transcript as it was a
12 transcript of a proceeding before another Grand Jury.

13 THE FOREPERSON: Okay.

14 BY MR. PETERSON:

15 Q The informant, Donald Hendrickson, as I understand
16 it, had contact with Lawrence Pebbles?

17 A Yes.

18 Q John Lambros?

19 A Yes.

20 Q And also had contact with Tracy Penrod or Tracy
21 Greer?

22 A That's correct.

23 Q And I understand that you've also undertaken a number
24 of other interviews of other various witnesses to some of
25 these events?

EXHIBIT A.

SYNDICATED REPORTERS

EXHIBIT A.

1 bills?
 2 A That the cash payments were moneys that had been
 3 generated through the sales of cocaine and that Pebbles
 4 would have the money delivered to the law office or
 5 contact people and ask them to bring money over to the law
 6 office because he was frequently out of town and in south
 7 Florida or in Brazil or in California and the office
 8 needed the cash to run with. So he would ask these
 9 individuals to take money over and deliver it to the law
 10 office so the bills could be met at the law office.
 11 Q Earlier, we had talked about your use of an informant
 12 by the name of Donald Hendrickson during the course of
 13 this investigation. As I understand it, Mr. Hendrickson
 14 had some contact with John Lambros, correct?
 15 A He did.
 16 Q And in particular, in January of 1988 as referenced
 17 in Overt Act Paragraph Number 21, there were some
 18 discussions between Don Hendrickson and Mr. Lambros
 19 concerning drug trafficking, correct?
 20 A That's correct. They met on three separate occasions
 21 and discussed marijuana transactions and other drug
 22 transactions.
 23 Q With regard to Mr. Hendrickson's suggestions and
 24 proposals, what did Mr. Lambros indicate concerning the
 25 nature of his business?

SYNDICATED REPORTERS

EXHIBIT A.

1 A He indicated to Mr. Hendrickson he wasn't interested
 2 in marijuana as much, as he indicated his business was
 3 cocaine. And that it came to be that he didn't get
 4 involved with Mr. Hendrickson in any cocaine trafficking
 5 or transactions.
 6 Q Did Mr. Pebbles provide you with some information as
 7 to why Mr. Lambros did not pursue Don Hendrickson's
 8 interest in either marijuana or cocaine deals?
 9 A He did. He indicated on the February meeting at the
 10 Emerald Inn and subsequent dinner at the Hyatt that the
 11 subject of Donald Hendrickson came up. And that they were
 12 both suspicious of Don Hendrickson. And Lambros told
 13 Pebbles at that meeting that he had searched Donald
 14 Hendrickson for a wire at one of the meetings that they
 15 were at.
 16 Q Was that consistent with the law enforcement
 17 investigation that had taken place while Mr. Hendrickson
 18 was meeting with Mr. Lambros?
 19 A Yes. The last meeting they had that we were
 20 monitoring, we did equip Mr. Hendrickson with a tape
 21 recording device and Mr. Lambros searched him for it but
 22 didn't find it.
 23 Q How do you know that? What did you hear?
 24 A The tape just -- they were talking and they were
 25 talking about their relationship and Lambros indicates --

SYNDICATED REPORTERS

EXHIBIT A.

EXHIBIT

- 1 and I'm paraphrasing -- that "I trust you but this is something I have to do. And I'm sorry I have to do this."
- 3 And the tape went dead at that point but he just searched 4 him.
- 5 He had the tape recorder in his jacket pocket 6 and he took his jacket away from his body and patted him 7 down so he missed it.
- 8 Q There is also a reference in the Overt Act paragraphs 9 and specifically it is at Overt Act Paragraph 5 on page 10 concerning Michael Kenneth Lemon; that's a name you're 11 familiar with?
- 12 A I am.
- 13 Q What was his relationship to Pamela Rae Lemon?
- 14 A He's Pamela Rae Lemon's brother.
- 15 Q There was an independent investigation in southern 16 Minnesota of Michael Kenneth Lemon, correct?
- 17 A Yes.
- 18 Q And during the course of that investigation, Michael 19 Kenneth Lemon distributed cocaine?
- 20 A That's correct.
- 21 Q He was ultimately convicted of a possession of 22 cocaine charge in state court in southern Minnesota?
- 23 A That's correct.
- 24 Q You had some contact with an informant involved in 25 the investigation of Michael Lemon, is that right?

SYNDICATED REPORTERS May 17, 67 Doc 1518R

EXHIBIT A.

- 1 A Yes.
- 2 Q What information did that informant provide you 3 concerning a source of supply of cocaine that Michael 4 Lemon was relying on?
- 5 A During the interview, the informant told me that he 6 was getting his cocaine from Michael Kenneth Lemon and 7 that during the course of transactions and their 8 relationship in this business, Michael Kenneth Lemon 9 advised him that he was getting his cocaine from the 10 roommate of his sister, the fellow that Pamela Lemon lived 11 with, that he was a stockbroker, that he had recently 12 moved into a large house on the lake.
- 13 Q Was there reference to an address near the State Fair 14 Grounds?
- 15 A He indicated to me at one time that Michael Kenneth 16 Lemon had taken him near the house where the source of 17 supply lived which was in St. Paul and had him wait at a 18 location while he went and got cocaine. That area he 19 waited in is consistent with an address where John Lambros 20 used to live at 1008 Topping Street in St. Paul. It was 21 during this time period that Mr. Lambros moved to a house 22 in Plymouth on Bass Lake.
- 23 Q And was the information about Michael Lemon's sister 24 living with this stockbroker consistent with what you know 25 about Pamela Lemon's residence?

SYNDICATED REPORTERS May 17, 67 Doc 1518R

EXHIBIT A.

EXHIBIT A.

19.

UNITED STATES DISTRICT COURT
 DISTRICT OF MINNESOTA
 FEDERAL DIVISION

-X
 United States of America, : 4-89 Crim. 82(05)
 Plaintiff, :
 -vs- :
 John Gregory Lambros, :
 Defendant. : 1:00 o'clock p.m.
 -X

VOLUME IV
 TRANSCRIPT OF TRIAL
 BEFORE THE HONORABLE DIANA F. MURPHY,
 CHIEF UNITED STATES DISTRICT JUDGE, and a jury

APPEARANCES:
 For the Plaintiff: Douglas R. Peterson,
 Assistant U. S. Attorney
 For the Defendant: Charles W. Faulkner

Court Reporter: Faith M. Fitto
 552 N. S. Courthouse
 Minneapolis, Minnesota

1 the incident where you picked her up driving down the highway

2 at the time of her arrest?

3 A. No, sir. At the time of the events in St. Louis and in

4 Bettendorf, Iowa, we had not identified who Pam, Tammy, was.

5 It was later learned through checking records at Eastern

6 Airlines and at Rupert's that we discovered her full name.

7 Q. At some point in this investigation, Mr. Donald

8 Hendrickson, who was your informant, --

9 A. Yes, sir.

10 Q. -- attempted to make a drug deal with Mr. Lambros?

11 A. That's correct. They met on a number of occasions.

12 Q. Could you tell us, in the time frame between the time of

13 Pebbles' arrest in February, 1986 and the beginning of this

14 knowledge that you had, when that was?

15 A. The two specific meetings that I recall were both in

16 January of 1988, January 12th and I believe January 28th. Mr.

17 Hendrickson and Mr. Lambros met and discussed drug

18 transactions involving marijuana and cocaine.

19 And there came a time that it was more or less left --

20 there were drugs to be coming in, and they would talk later

21 about the deal. They had arranged a place to exchange drugs.

22 but then the events in February took place and nothing of that

23 sort happened.

24 There was a time, in speaking with Mr. Pebbles, and I

25 believe he spoke about it here, that when Mr. Lambros and Mr.

EXHIBIT B.

EXHIBIT B.

EXHIBIT B.

Vol. IV - P. 524 - 608

1 Pebbles talked, they talked about their mutual distrust of Mr.
 2 Hendrickson. So there was no further contact.
 3 Q. Mr. Hendrickson was never able to get Mr. Lambros to
 4 actually do a drug deal?
 5 A. No, sir. There was discussion of amounts, the type of
 6 drug, cocaine, a place to make an exchange of kilograms, but
 7 it never took place.
 8 Q. Is it possible, sir, that Mr. Lambros was playing Mr.
 9 Hendrickson along for some other purpose?
 10 A. I can't imagine why someone would have those
 11 conversations and do what Mr. Lambros did with Mr. Hendrickson
 12 and discuss multi-kilogram cocaine deals to play someone
 13 along. It wouldn't make sense to me to do that.
 14 Q. What if he wanted to gather information about what Mr.
 15 Hendrickson was doing?
 16 A. For whom?
 17 Q. For anyone.
 18 A. My past experience would indicate to me that's highly,
 19 highly unlikely. But it just doesn't make sense to have Mr.
 20 Lambros sit with a government informant, although he didn't
 21 know at the time, although he suspected.
 22 He searched Mr. Hendrickson at one point, missed the
 23 device we had placed on Mr. Hendrickson, was very cautious
 24 about his conversations. And in that regard I would suspect
 25 it was the opposite, that he wasn't gathering information for

EXHIBIT B.

1 anyone other than himself. The deal just never took place.
 2 Mr. Pebbles and Mr. Lambros talked about Mr. Hendrickson.
 3 Mr. Pebbles was already suspicious of him and never did
 4 another drug deal with him after the March 4th thing. And it
 5 would be my assessment that he wasn't gathering information
 6 for anyone other than himself.
 7 Q. On both occasions, though, it was Mr. Hendrickson that
 8 approached Mr. Lambros, wasn't it?
 9 A. Yes, sir, that's correct.
 10 Q. And that was at your direction?
 11 A. Myself and other agents, yes.
 12 Q. Were those conversations monitored?
 13 A. The one in particular where I spoke about him being
 14 searched, Mr. Hendrickson had a recording device on him in a
 15 jacket pocket that Mr. Lambros missed when he searched him.
 16 He fanned his jacket back, patted him down, his body, his
 17 pants, all the way down to his shoes. There was a recording
 18 made of that. And at other meetings --
 19 Q. Well, let's just talk about that one. What happened to
 20 that recording?
 21 A. We have it somewhere. I'm not sure exactly where it is
 22 at this time. The recording takes place in a downtown office
 23 building -- I'm not sure exactly at this point which building
 24 it was -- and ends in the garage where they get in the car.
 25 And Mr. Lambros begins the search of Mr. Hendrickson.

EXHIBIT B.

1 Q. Did Mr. Lambros and Mr. Hendrickson also talk about some
 2 stock transactions?
 3 A. Yes, sir, they did.
 4 Q. And Mr. Lambros was trying to get Mr. Hendrickson to put
 5 some money into some stock transactions?
 6 A. That was part of the conversation, yes. He had suggested
 7 to Mr. Hendrickson that Mr. Hendrickson provide his brother's
 8 name and social security to Mr. Lambros, and they would put
 9 the stock in Mr. Hendrickson's brother's name.
 10 Q. Is it correct that Mr. Hendrickson's brother at the time
 11 was quite ill?
 12 A. He was terminally ill at that time. I believe he's
 13 passed on.
 14 Q. And his brother was -- Mr. Hendrickson was not the
 15 guardian, but he was taking care of his brother?
 16 A. Yes, he was.
 17 Q. So Mr. Hendrickson didn't approach Mr. Lambros until
 18 January of 1988, is that right?
 19 A. The two meetings I recall were the dates I just told you.
 20 There were other meetings, and they may have been in December
 21 or earlier in January. But it was in that time frame, within
 22 a month or six weeks, I believe was the time frame.
 23 Q. And in none of these instances were any drugs exchanged?
 24 A. Yes. Mr. Hendrickson had provided a sample of marijuana
 25 to Mr. Lambros for his purpose to test it to see if it was

EXHIBIT B.

1 marketable. They spoke later on about that at the meeting on
 2 the 22nd at the restaurant.
 3 Q. So Mr. Hendrickson gave Mr. Lambros some marijuana?
 4 A. That's correct. It was a sample provided by Mr.
 5 Hendrickson to Mr. Lambros so Mr. Lambros could see if he
 6 could market larger quantities.
 7 Q. And Mr. Lambros never returned the sample, is that right?
 8 A. He never returned the sample, and there was discussion
 9 about what a third party thought of the sample.
 10 Q. Did Mr. Hendrickson have any meetings during this time
 11 period with Mr. Angelo?
 12 A. No, sir.
 13 Q. But you knew about Mr. Angelo during this time period?
 14 A. Oh, yes, we did.
 15 Q. And was Mr. Angelo, during this time period at the end of
 16 1987, beginning of 1988, driving and selling seafood and meat?
 17 A. I don't know during that time frame. On the March 4,
 18 1987 transaction, he had the truck then. I don't know what
 19 Mr. Angelo was doing during the time frame we're speaking of
 20 now in early '88.
 21 Q. Now, you described for us earlier the process of taking a
 22 kilogram of cocaine and breaking it down into dealer
 23 quantities?
 24 A. Yes, sir.
 25 Q. And is it fair to say, sir, that that process requires

22.

EXHIBIT B.