John Gregory Lambros  
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March 20, 2002

ADDITIONAL 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(6), 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, \textit{STATE OF WASHINGTON vs. MARTIN SHAW PANG}, 940 P.2d 1293, 1352 (Washington, 1997), which is offered as \textbf{EXHIBIT T} within \textit{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, \textit{U.S. vs. LAMBROS}, 65 F.3d 698 (8th Cir. 1995). The \textit{SEDENTIOUS AGREEMENT} of the Brazilian Supreme Court in allowing Lambros to be extradited from Brazil can be labeled no other than \textit{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 \textit{IMPEACHMENT} in \textit{U.S. vs. LAMBROS}, CA-4-89-52(5), United States District Court, District of Minnesota, the October 2001 ruling by Mexico's Supreme Court supports same. Also, please note that \textit{COLOMBIA'S Supreme Court does not allow extradition of those facing a life sentence and limits maximum prison sentences to 30 (thirty) years. See, \textit{U.S. vs. GALLO-CHAMORO}, 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); \textit{U.S. vs. ABELO-SILVA}, 948 F.2d 1188, 1174 (10th Cir. 1991)(As far 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 limitations either country imposes. CCKMAS, 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.)

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

\textbf{EXHIBIT B: U.S. vs. GALLO-CHAMORO, 48 F.3d 502, Page 503 (11th Cir. 1995); and \textit{U.S. vs. ABELO-SILVA}, 948 F.2d 1188, 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. Kenner. This document is a total of twenty-nine (29) pages including exhibits. See, \textbf{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,

John Gregory Lambros, Pro Se
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Leavenworth, Kansas 66048-1000 USA
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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 extradition limits ruling:

Those facing life in the U.S. won't go to Mexico

The U.S. Supreme Court has blocked the extradition of a Mexican citizen who faces life in prison in the United States. The court ruled that the Mexican government did not properly request the extradition of the man, who is accused of murder in New York. The decision means that the man, who has been in custody in Mexico since 2000, will not be sent to the United States to face trial.

Extradition agreements between the U.S. and Mexico are governed by the U.S. extradition statute, which requires that the request for extradition be made by the government of the 请求国 (requesting country), in this case Mexico, to the government of the 国家 (responding country), in this case the U.S. In this case, the Mexican government failed to provide evidence that the man had committed an act punishable by death or life imprisonment in the U.S.

The decision is a blow to Mexico's efforts to extradite individuals with criminal records, particularly those with serious offenses, to the United States. The court's ruling underscores the importance of adhering to international extradition agreements and ensuring that extradition requests are made in accordance with established procedures. It also highlights the ongoing challenges faced by Mexican authorities as they attempt to bring individuals to justice for crimes committed in the U.S.

The decision is likely to have implications for future extradition requests, as both the U.S. and Mexico assess the impact of the ruling and its implications for intergovernmental cooperation. The court's decision may also prompt a reevaluation of current extradition protocols and processes, with a focus on improving transparency and ensuring that requests are made in accordance with established international standards.

The ruling is yet another example of the complexities and challenges faced by both countries as they work to maintain strong relationships and foster cooperation in the realm of international law enforcement. It underscores the importance of continued dialogue and engagement between the U.S. and Mexico to address these issues and ensure a fair and equitable approach to extradition matters.

In summary, the U.S. Supreme Court's decision has significant implications for the future of extradition requests between the U.S. and Mexico. It highlights the need for a reevaluation of current protocols and processes, with a focus on ensuring that requests for extradition are made in accordance with established international standards and protocols. The ruling is a reminder of the ongoing challenges faced by both countries as they work to maintain strong relationships and foster cooperation in the realm of international law enforcement.
Lisa L. Ruben, Linda Collins Hertz, Dawn Brown and Thomas O'Malley, Miami, FL, for appellants in No. 91-5689.


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 Fuentes v. United States, 356 U.S. 112, 78 S.Ct. 572, 2 L.Ed. 2d 700 (1958), 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 Fuentes any member of a conspiracy is criminally liable for all reasonably foreseeable crimes committed by others during the course and in furtherance of the conspiracy. Because criminal liability based on the Fuentes 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 Osvando Gallo-Chanorro ("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 No. 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 1988.

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 841(a) and 844(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 225 of the Colombian Ministry of Justice, stated: "The [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 have [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 of aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

(b) Whoever willingly causes an act to be done which is directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 40 (1988). The resolution also specified that, if extradited and convicted, Gallo must not be sentenced to prison for more than thirty years.

II. DISCUSSION

The United States and Colombia entered into an extradition treaty on September 14, 1979. Colombia ratified the treaty by its Law 37 of 1984, and the United States ratified the treaty on November 23, 1984. In 1984, the Colombian Supreme Court held that Law 37 was constitutional because it had been approved by a Colombian government official other than the President of Colombia. Because of this ruling, the treaty remains applicable in Colombia. 1583- 316 (1984). However, in 1984 the President of Colombia, pursuant to his manual law power, issued Decree Number 1860 which provides in pertinent part that "for the purpose of extradition of Colombians, and foreign nationals sought for narcotics trafficking and related offenses, the procedure set forth in the Code of Criminal Procedure should be applied with the modifications set forth herein." 4. The instant of this decree suspends Colombia's requirement that Colombian nationals be extradited only pursuant to public treaties. Id.
1174
946 FEDERAL REPORTER, 2d SERIES

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 that 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 Paramount, 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 difference to the asylum state in Paramount cannot be construed to mean the asylum state's jurisprudence governs the specialty doctrine as applied in the United States.

[6,11] 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. Causas, 849 F.3d at 1427. The limitations which appear in Deere No. 1360 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 Deere is a reference to Article 860. Article 860, 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 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 Paramount bolies his contention that the specialty doctrine is about additional facts and not offenses. "The test is whether the trial is for a 'separate offense.'" Paramount, 299 F.2d at 491. (emphasis added). In Deere we did not address the "facts" versus "offenses" distinction. Instead, Deere discussed the specialty doctrine in terms of parallel "charges." Deere, 805 F.2d at 922. "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 to trial on 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. Reestatement (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. Senn, 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, Senn informs the doctrine of specialty to "require[t] a correspondence between the charges contained in the indictment and the facts presented to [the asylum country's] magistrate." Senn, 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 reexamination of the "facts presented" language in Senn. The reference to facts, however, stems from the extradition treaty between the

EXHIBIT B.
February 15, 2002

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) 296-3052
U.S. CERTIFIED MAIL, No. 7001-0320-0005-1590-0399

BR: FILING OF COMPLAINT AGAINST MINNESOTA ATTORNEYS IN 1976. THEIR ACTIONS CARRY FORWARD TO THIS DATE:

a. Peter J. Thompson (Current address: Thompson & Sicoli, LTD., 2320 Park Ave., Minneapolis, Minnesota 55404-4403, Tel. (612) 871-0708);

b. Joseph T. Walbran (Current address: Assistant U.S. Attorney, 800 U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415);


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. LAMBRUS, 544 F.2d 962 (8th Cir. 1976).

Currently, John Gregory Lambrus is incarcerated on a non-related sentence, with the above entitled indictments and sentences serving as lodged detainers. Therefore, John Gregory Lambrus "remains 'in custody' under all of his sentences until all are served. See, PEYTON vs. RONE, 391 U.S. 54, 67 (1968)('prisoner serving consecutive sentences is 'in custody' under any one of them'),
Attached as EXHIBIT A 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 B 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. v. FEYRO, 786 F.2d 826, 837 (8th Cir. 1986). In U.S. v. 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 his [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) BURGER v. U.S., 295 U.S. 78, 88 (1935)."

U.S. v. 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, WALKER, 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 3.3, 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, HAMBERN 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 BENNETT, acting as U.S. Attorney BENNETT 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 "Maintaining 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. FINKELEIT, 496 U.S. 617, 632, 110 S.Ct. 2658, 111 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 existence of federal jurisdiction over a geographic area, whether the terms 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, 963 (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, HAIL vs. HENKEL, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 632 (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. C.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 REMISSISSION TO THE GRAND JURY, UNLESS THE CHARGE IS MERELY A MATTER OF FORM. Id. at 254). (emphases added)
12. On August 14, 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 717, 738 in Head Notes 2, 3, 4, 6, 7, 8, and 9 (8th Cir. 1976). See, EXHIBIT F.

14. Other Eighth Circuit cases 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. DERNON, 483 F.2d 1093 (8th Cir. 1973); (b) U.S. vs. MILLER, 774 F.2d 883, 885-88 (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 indicate 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.

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 Winkley, 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 v. New York, 432
requires the prosecution to prove beyond a reasonable doubt all the elements
INCLUDED IN THE DEFINITION OF THE OFFENSE of which petition is CHARGED." (emphasis
added)).

18. The Fifth Circuit addressed the question directly in U.S. v.
Perrier, 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.")

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 existence 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."

"The federal enclave laws are a group of statutes that permit the federal courts
to serve as a forum for the prosecution of certain crimes when they occur within
the 'special 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' FLEA INVOLUNTARY 777

21. On April 22, 1976, John Gregory Lambros, as per the advice of
Attorney Thompson, entered guilty pleas to Criminal Indictments Cr-3-75-120 and
Cr-3-76-17. The record reflects the following proceedings: See, U.S. v. LAMBROS,
544 F.2d 962 (8th Cir. 1976) EXHIBIT A.

a. "[T]he defendant [Lambros], as part of the
negotiation with the defendant, tendered 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 J-76-177. DEFENDANT LAMKOS: Yes, Your Honor." (emphasis added) Id. at 964.

c. "On June 21, 1976, Lamkos 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.


23. In RENDEZ v. MORGAN, 428 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 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). "And 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 v. U.S., 394 US, at 471. 22 L.Ed.2d 418, 428 (1969). (emphasis added) Id. at 119.

24. Therefore, how could John Gregory Lamkos' 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 Van Buren,
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 Van Buren, St. Paul,
Minnesota.

25. Again, please refer to paragraph 21 (a), (b), & (c), and note
that Judge Devine always asked if Lambros wanted to PLEAD GUILTY TO THE INDICTION
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 any time and such jurisdictional determination CANNOT
BE WAIVED, STIPULATED, OR CONVEYED TO BY ANY PARTY. See, INSURANCE CORP. VS.
COMPAGNIE DAUTOUR, 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, springsing
from the nature and limits of the judicial power of the United States is INFLIABLE
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 v. NEW YORK STATE EXECUTIVE PATAKI, 962 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 ...")


31. LAWRENCE COUNTY v. SOUTH DAKOTA, 668 F.2d 27, 29 (8th Cir. 1982) ("[U]nder the circumstances, the federal courts operate within jurisdictional constraints and ... parties by their consent CANNOT confer subject matter jurisdiction upon the federal courts."). Quoting, HELLMAN v. 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. F.S.I., INC. v. BROWN, 951 F.Supp. 1381, 1393 (N.D. Iowa 1996) (also offers an excellent overview of cases to support this statement)

33. THOMPSON v. 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)

36. U.S. v. STEWART, 727 F.Supp. 1068, 1069 (N.D.Tex. 1990) "[T]he defendant's motions raise the question of subject matter jurisdiction. See THOR v. 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 (confering 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 FON v. U.S., 168 F.2d 371 (1st Cir. 1948)."

AMENDED JUDGMENT AND PROBATION/COMMITMENT ORDER 777
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.

17. Upon review of EXHIBIT E, 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. LAMBRAS, 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 LAMBRAS 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 29, 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 29, 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 BENNER, WALBRAB, 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 1114 to Section 11141.

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

[Signature]

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

c:
United States Senate
Lambros family
Boycott Brazil Web site
E-Mail release to supporters of Boycott Brazil File
eyed glasses. 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. 2531, 37 L.Ed.2d 169 (1973); White v. United States, 399 F.2d 818, 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 his 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 disclosed herein included (1) testimony by Loper that conditioning about a month before the instant robbery he and Downey had made automobile trips to Kentucky and Pennsylvania for the known 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, 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 Maas we conclude that Downey's contention of insufficient evidence has little merit.

Affirmed.


No. 76-1589. 26-1581.

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. Davist, Chief Judge, convicted defendant on charges of jury or, and conspiracy to distribute and possess 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 Ostenhout, Senior Circuit Judge, held that despite fact that defendant was not informed, at time he entered pleas of guilty, possible

jumped the teller cages. Also the discussion by Downey's counsel at the hearing indicates that he was aware that the evidence would show that all three principals were stockings masks that none of them wore glasses. Downey's argument, therefore, has little merit.
enhancement of punishment for subsequent violation of Federal Narcotics Act, trial court did not abuse its discretion in denying motion to withdraw guilty plea.

Affirmed.

1. Criminal Law -- 274(2)

Trial court did not abuse its discretion in denying defendant's motion to withdraw guilty plea 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 plea, 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)

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

1. 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 plea, 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.


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 plea 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. 76-1586 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 3-75-123, 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 122 as to Court 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 Court 43 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-as-
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.
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 pleas as to Count 48 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 3:76 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 explained in connection with the assault...
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 advised that the consequences 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 with, or in any other respect.

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 pre-sentencing motion for leave to withdraw his plea of guilty. We find no abuse of discretion and affirm the convictions.

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


In United States v. Woosley, 440 F.2d 1290 at 1291 (CA 5 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. Rawlin, 440 F.2d 1043, 1045-1046 (CA 5, 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 conceded that appropriate questioning 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 inquiry, hereinafter 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 narcolepsy 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.

In Weinman v. United States, 345 F. Supp. 67, 690 (D. Calif. 1971), a case presented 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 narcotic charge was enhanced because of the 1975 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 Foshee v. United States, 307 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, 476 P.2d 3864, 1968 (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 "possibilities collateral 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 blurred 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.

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
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 prosecution'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.

1. Courts = 465, 466
   In diversity cases, interpretation of district court on question of state law is entitled to great deference.

2. Insurance = 612, 615
   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 service of notice of entry of
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA

v.

JOHN G. TAKENOS

INDICTMENT

18 U.S.C. §§ 2111 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. TAKENOS,

knewingly, 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. Prystowsky, and Special Agents Donald H. Helone and James F. Bruech of the Federal Bureau of Investigation 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. TAKENOS,

knewingly, 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 duties; in violation of Title 18, United States Code, Sections 111 and 114.

MAR 24 1976

Chief
Deputy U.S. Marshal

United States Attorney

EXHIBIT B.
18 USC 111 and KNOWINGLY, INTENTIIONALLY, 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 duties.

Robert G. Renner, U. S. Attorney
Joseph T. Walbran, A. U. S. D. A.
6-21-76 (8) MINUTES OF PROCEEDINGS (Devitt-J; Anderson-Reporter)
Sentencing. Committed to the custody of the Atty. Gen. for imprisonment for a period of ten (10) years. Court II dismissed on motion of the Govt.

(9) JUDGMENT AND COMMITMENT. Cert. copies to U.S. Marshal, U. S. Attorney and Probation.


7-1-76
NOTICE OF APPEAL in CR. 3-75-128 and CR. 3-76-17 from the denial of defendant'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 Carl Anderson, Court Reporter, 7th Federal Building, St. Paul, Minnesota 55101, 612 227-1223

7-2-76
DEPT.'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. 3-75-128 and CR. 3-76-17) (Lodged in CR. 3-75-128)

7-9-76
DEPT. JOHN GREGORY LAMBRAS' NOTICE OF MOTION for Order reducing and amending the sentence with regard to fine for hearing July 14, 1976 at 3 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 Money 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 Def. for Order reducing and amending sent. with regard to fine: argued, submitted and taken under advisement. Motion of John W. Lambros to set return of fine money. IN THE REPORT OF PAYMENT OF FINE AND RESTITUTION PAYMENTS

EXHIBIT C.
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)

7-16-76 (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. 3,355 in sum of $25,000.00 and mailed to
John Lambros, 3213 Ridgewood Road, St. Paul, Minnesota 55112 with
receipt requested.

7-20-76 (18) DESIGNATION OF RECORD AND STATEMENT OF ISSUES. Aff. of serv. 7-15-76.

7-25-76 (19) RECEIPT FOR REGISTRY CHECK by J. W. Lambros on 7-17-76.

7-27-76 (20) REPORTER'S TRANSCRIPT of hearing April 22, 1976 (Anderson-Reporter)

8-29-76 (21) REPORTER'S TRANSCRIPT of plea on April 22, 1976.

9-29-76 (22) NOTICE TO COUNSEL

8-4-76 EXH (331) MEMORANDUM & ORDER (Devitt-J 8-4-76) (copy placed herein) that deft's motion to withdraw his guilty plea is denied (Lodged in CR. 3-75-125)

8-17-76 (332) NOTICE TO COUNSEL with copy of Memorandum & Order

(23) SEE (332) NOTICE TO COUNSEL with copy of Memorandum & Order.

SEE 357 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

9-17-76 (26) CERT. COPY OF AMENDED JUDGMENT COMMITMENT ORDER WITH MARSHAL'S RETURN 8-27-76

(SEE No. 356 in CR. 3-75-128) APPELLANT'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) APPELLANT'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 APPELLANT'S SUPPLEMENTAL DESIGNATION OF RECORD (Second Supplement) (Lodged in CR 3-75-128)

9-29-76 (SEE No. 361 in CR. 3-75-128) APPELLANT's RESPONSE TO APPELLANT'S OBJECTIONS TO APPELLANT'S SUPPLEMENTAL DESIGNATION OF RECORD. (In CR. 3-75-128 and CR 3-76-17) (Lodged in CR. 3-75-128)

9-6-75 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.

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.

1-3-77  (31) NOTICE TO COUNSEL 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  ORDER, copy (Devitt-J) denying deft.'s motion for reduction of sentence under Rule 35 (orig. lodged in 3-75-128)

5/1/79  (33) DEFENDANT'S 2255 MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE (CV 3-79-219)

5/4/79  (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 writing 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


6/19/79  (38) NOTICE TO COUNSEL

6/26/79  (39) ORDER(Devitt 6/26/79) petitioner's petition for a 2255 hearing is denied.

7/16/79  (40) NOTICE TO COUNSEL

7/16/79  (41) NOTICE OF INTENT TO APPEAL (FILED AS MOTION TO PROCEEDING FORMA PAUPERIS) letter was sent to deft. requesting financial affidavit and also notice of appeal and designation of record.

2/7/79  (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

4/3/79  (43) NOTIFICATION TO CERTIFY THE RECORD ON APPEAL TO THE UNITED STATES COURTS OF APPEALS FOR THE EIGHTH CIRCUIT

EXHIBIT C.
CR. 3-76-17  U.S. VS. JOHN LAMBROG

/31/79  44) ORDER TO FILE FORMA PAUPERIS (McFarlin 8/30/79) petitioner is permitted to file appeal in Forma Pauperis. Certified copy of order mailed to the Court of Appeals.

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.
UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA-THIRD DISTRICT  

JUDGMENT AND PROBATION/COMMITMENT ORDER  

In the matter of the United States of America v.  

LUKE G. JAVAGE  

Defendant  

THIS CAUSE came to be heard upon the motion of the United States of America for sentence, which motion was heard, and the court has considered the evidence presented and finds as follows:  

The defendantLuke G. Javage, having been found guilty of violating Title 18, United States Code, Section 2252A(a)(2)(B), is sentenced to thirty (30) years in the custody of the Attorney General of the United States of America.  

The sentence is to begin on the date of sentence.  

The defendant is ordered to pay all costs of prosecution.  

In addition to the terms of this order, the defendant is ordered to pay restitution in the amount of $10,000.00, to be determined by the United States Attorney.  

The defendant is ordered to make monthly payments of $500.00, which shall be deducted from any wages or other income received by the defendant.  

This order is entered on this 21st day of June, 2017.  

EDWARD J. DAVIS  

dated this 21st day of June, 2017.  

DEPUTY CLERK  

EXHIBIT D
United States of America vs.

JOHN G. LAMBROS

DISTRICT OF MINNESOTA - THIRD DIVISION

Defendant

Docket no. 3-75-17

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on the date June 21, 1976.

COUNSEL

___ WITHOUT COUNSEL

J WITH COUNSEL

Peter Thompson

PLAID

GUILTY, and the court being satisfied that there is a factual basis for the plea.

There being a finding/sentence of

___ NOT GUILTY. Defendant is discharged

___ GUILTY.

Finding A JUDGMENT

Defendant has been convicted as charged of the offense of having knowingly, intentionally, and by means and use of a deadly and dangerous weapon, forcibly assaulted, resisted, opposed and interfered with Deputy United States Marshal Proctor and Special Agent Nelson and Branch 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 1116, as charged in Count I of the Indictment.

SENTENCE OR PROBATION ORDER

The court finds that defendant has nothing to say why judgment should not be pronounced. Because he has remained in the custody as charged and convicted and contrary to this finding, the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 24 months.

SPECIAL CONDITIONS OF PROBATION

A true copy in [insert] sheet(s) of the record in my custody.

[Signature]

[Date]

[Name]

[Position/Title]

ADDITIONAL CONDITIONS OF PROBATION

In addition to the usual conditions of probation imposed above, it is hereby ordered that the defendant shall not leave the confines of his home or any other place of safety without the express permission of the probation officer or the court. The court may change the conditions of probation, either to extend or to shorten the period of probation, and it is hereby ordered that the probation officer or the court may change the conditions of probation at any time during the probation period.

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

EXHIBIT E.

[Signature]

[Date]

[Position/Title]
it to jury, in prosecution for conspiracy to distribute and possess with intent to distribute cocaine hydrochloride and cocaine base, as which defendants ultimately received sentences in excess of statutory maximum for an unspecified quantity of drugs, resulted in imposition of sentence for crime of 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 8=113

Jury = 34(1)

District court improperly 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 8=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 8=40

When an indictment fails to set forth an essential element of a crime, the court has no jurisdiction to try a defendant without that count of the indictment.

10. Sentencing and Punishment 8=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 8=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 8=413

Sentencing and Punishment 8=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 8=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 8=142

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

15. Grand Jury 8=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.

2. Post Office 27


3. Indictment and Information 260

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

4. Indictment and Information 751

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

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, 114.

6. Indictment and Information 1215

Post Office 49(74)

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 92, 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 willful 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. Farm-
ners Co-op alleged 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 in-
ocurred hedge losses with the unprecedented rise in corn prices in late 1985 and early 1986, 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 1996 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 1996 corn and soybean crops. 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

[3] The federal district courts have al-
ways 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." Martin v. Brown Management Co., Inc., United States, 4 F.3d 644, 650 (8th Cir. 1993) (citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 434, 441, 106 S.Ct. 1426, 1431, 89 L.Ed.2d 503, rehg. denied, 476 U.S. 1253, 106 S.Ct. 2360, 90 L.Ed.2d 882 (1986)).

The rule that the federal court shall not exercise jurisdiction within the scope of a state law jurisdictional statute is clear. The federal court in a diversity action must have jurisdiction of all issues arising out of the controversy.

1. Statutory Jurisdiction


The removal statute is designed to ensure that the federal courts have jurisdiction over cases that are properly before them. The Supreme Court has held that the removal statute is to be construed liberally to effectuate its purposes. Williams v. Calvert Taxicab Co., 393 U.S. 25 (1968). The statute allows the federal courts to hear cases if they have jurisdiction in personam or personal jurisdiction over the defendant. See 28 U.S.C. § 1441(a).

For purposes of determining whether the defendant is properly before the federal court, the forum state’s long-arm statute is applied to determine whether the defendant is subject to personal jurisdiction in the forum state. See International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

The plaintiff must make a prima facie showing that the defendant is subject to personal jurisdiction under the forum state’s long-arm statute. The plaintiff must show that the defendant was involved in purposeful availment of the forum state’s process and that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. See, e.g., Burger v. diners’ con-

[5] "[F]ederal courts operate within jurisdictional constraints and ... perform their function only as long as such action is properly before them." (Citing 28 U.S.C. § 202.)

A. Removal Jurisdiction

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