

1 James D. Henderson (State Bar No. 104150)
2 LAW OFFICES OF JAMES D. HENDERSON
3 12121 Wilshire Boulevard
4 Suite 1120
5 Los Angeles, California 90025-1123
6 Telephone: (310) 478-3131
7 Facsimile: (310) 312-0078

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Defendant
6 RONALD SACCO

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RONALD SACCO,

15 Defendant.

) CASE NO. CR 00-0186 MJJ

) DEFENDANT'S SENTENCING
) MEMORANDUM

) DATE: March 27, 2003
) TIME: 2:00 p.m.

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Defendant's Sentencing Memorandum

Case No. CR 00-0186 MJJ

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1 NOW COMES the Defendant, Ronald Sacco, by and through his counsel-of-record, James D.
2 Henderson, and files this memorandum relating to his sentencing in this matter which is currently set
3 for Thursday, March 27, 2003, at 2:00 p.m., before the Honorable Martin J. Jenkins, United States
4 District Judge.

5 I.

6 INTRODUCTION/BACKGROUND

7 The Defendant, Ronald Sacco, pursuant to a written plea agreement, entered a plea of guilty
8 on December 5, 2002, to a two-count Information charging him with engaging in a gambling
9 operation in violation of 18 U.S.C. § 1955, and money laundering pursuant to 18 U.S.C. § 1956. The
10 gambling violation, Count 1, related to Defendant Sacco's association with a Costa Rican
11 international gaming business, named Costa Rican International Sports ("CRIS"), which does business
12 and takes bets from throughout the world on virtually all sporting events of consequence occurring in
13 the international community. While in the employ of CRIS, during March and April of 2000,
14 Defendant Sacco was intercepted on a court authorized wiretap which had been placed on the
15 telephone of one Albert Flynn in Daly City, California, at the Seven Mile House Restaurant. Albert
16 Flynn, at the time, was an "agent" for CRIS who paid out and collected winning and losing sports
17 wagers on behalf of both himself, and the company. The CRIS/Flynn arrangement was, in substance,
18 that Flynn would split the risk relating to his own bookmaking clientele by utilizing CRIS as his
19 banker. In return, Flynn would share, on a percentage basis, his profits with CRIS, as well as any
20 losses. Flynn would also guarantee payment from his own customers, each of which remained his
21 personal responsibility.¹ The three wiretap interceptions of Sacco showed him discussing with Mr.
22 Flynn the account status with CRIS of various customers as well as related information. The
23 interceptions took place on March 22, March 31, and April 3, 2000.

24 The money laundering violation, Count 2, to which the defendant has entered his plea, relates
25 to the cashing of losing bettors' checks and the recycling of the funds from losing bettors back into
26

27 ¹This "agent" type arrangement is, and has been, the traditional manner in which many
28 offshore and foreign sports books have serviced U.S. based customers who wished to place bets with
them outside the United States.

1 the business proceeds held by Mr. Flynn in order to pay off winning customers at later dates. In
2 short, the money laundering was merely a part of, and incidental to, the underlying gambling violation
3 which is the subject of the defendant's plea.

4 As noted above, the defendant entered his plea to the above-described behavior on
5 December 5, 2002. Sentencing is presently set for March 27, 2003, at the hour of 2:00 p.m.

6 II.

7 THE DEFENDANT'S PLEA AGREEMENT

8 The defendant's plea agreement, filed with the court on or about December 5, 2002, sets forth
9 the stipulation between the Government and the Defendant Sacco that between March 1 and April 30,
10 2000, the defendant in fact committed the two violations with which he was charged in the
11 Government's Information. The agreement then sets forth what are believed by the parties to be the
12 appropriate Sentencing Reform Act Guidelines calculations, conclusions with which the defendant's
13 presentence report is in agreement. In summary, these calculations indicate a final offense level of 13.
14 While it is understood that this figure is not binding upon the court, the parties' analysis, and that of
15 the U.S. Probation office, is that an offense level of 13 is the correct one for this defendant's
16 gambling offense. In addition to the offense level calculation, the defendant has agreed (pursuant to a
17 payment schedule to be worked out with the U.S. Probation Office) to pay a fine of \$200,000² which
18 is far in excess of the usual Sentencing Reform Act fine of \$3,000 to \$30,000 which is called for by
19 Guidelines § 5F1.2(c)(3) and noted in numbered paragraph 82 of the presentence report.

20 Finally, the parties have agreed, in numbered paragraph 14 of the plea agreement, that, in
21 recognition of the identity of conduct involved, the Government will recommend that the sentence
22 imposed in Case Number CR 00 0186 MJJ (the present case) be served concurrently with the
23 sentence to be imposed for defendant's supervised release violation in Case No. 92-0048-FMS.³

24 _____
25 ²The defendant has also agreed that the \$75,000 fine from a previous bookmaking conviction
26 will be factored into a payment schedule to be determined by the San Francisco U.S. Probation
Office.

27 ³Pursuant to Sentencing Guidelines §§ 7B1.3 and 7B1.4, this violation is a low-end class C -
28 supervised release violation which calls for a sentence in the range of 6 to 12 months. The essence of
(continued...)

1 III.

2 THE PRESENTENCE REPORT

3 Numbered paragraphs 4-26 of the presentence report set forth what is entitled an "Overview"
4 of the circumstances surrounding the defendant's bookmaking background as it relates to the two
5 cases dealt with in his plea agreement. Undersigned counsel has confirmed with the drafter of the
6 presentence report that the information contained in these paragraphs is the version of events
7 communicated to him by the F.B.I. and that it has no impact on the appropriate offense level
8 calculations other than the undisputed § 3131.1(2) adjustment for the defendant's role as set forth in
9 numbered paragraphs 34 and 40. The defendant agrees with this characterization of paragraphs 4-26
10 and does not dispute the resultant role adjustments set forth in paragraphs 34 and 40. The defendant
11 does, however, note the following in order to more fully set forth the factual background and the
12 defendant's involvement in the violations before the court.

13 The company with which the defendant was associated when his violations were committed
14 was a legally licensed and legitimate Costa Rican corporation named Costa Rican International Sports
15 ("CRIS"). As the court may know, corporate sports books are legal in many foreign jurisdictions and
16 the Republic of Costa Rica is among those venues. CRIS, like virtually all sports books which
17 operate as legitimate entities, is far from the old-fashioned type wire room which operated from a
18 hidden location, avoided taxes, and collected from losing bettors by inappropriate means. CRIS, for
19 example, pays all required Costa Rican taxes and fees, is run by a president, an executive vice-
20 president, a general manager, corporate counsel, supervisors, and has some 140 employees. The
21 company is divided into separate departments which handle wagering, marketing, finances, Asian
22 operations, and European operations. Asia and Europe, in fact, along with Australia, have become
23 ever increasing betting locales which now account for a majority of the CRIS business. CRIS is also
24 involved in software development with a product to be marketed for legal gaming operations

25 _____
26 ³(...continued)

27 the violation is that Defendant Sacco, by doing business with Albert Flynn during the three
28 intercepted telephone conversations during March and April of 2000, violated the provision of his
supervised release which precluded him from associating with a convicted felon; a condition which
the defendant denied he had violated in his reports to the U.S. Probation Office.

1 throughout the world. The company has a controller who signs all checks and oversees all bank
2 accounts by which all profits, losses, pay-outs, and expenses can be, and are, accurately and definitely
3 calculated. Finally, the company openly advertises, as do a host of other foreign sports books, in
4 gaming publications in the United States and elsewhere on a regular basis. The company's
5 relationship with the United States during 2000 was exemplified by the above-described involvement
6 with Albert Flynn, i.e. CRIS has served as the bank for pay-outs to those in the United States who bet
7 by placing wagers in Costa Rica via either the Internet or an 800 number telephone call to a telephone
8 clerk located in the Costa Rican capital city of San Jose. Only one circuit has specifically found this
9 activity to be illegal. Certiorari was only recently denied on June 17, 2002, in United States v.
10 Cohen, 260 F.3d 68 (2d Cir. 2001), cert. denied, 122 S.Ct. 2587 (2002). Previously, there existed
11 numerous knowledgeable commentators and legal opinions indicating that such activity did not
12 violate U.S. law and the question may still be open to some doubt. Cases like United States v.
13 Truesdale, 152 F.3d 443 (5th Cir. 1998), which involved foreign sports book betting via 800 number
14 telephone lines, had led many to believe that such activity could be completely legal.⁴ Despite such
15 legal disagreement, however, this defendant has elected to not challenge the Government's theory
16 here, or the Second Circuit's analysis in Cohen, and accepts full responsibility for the actions
17 identified in his plea agreement and the corresponding Information.

18 Against this background, and referring more specifically to the defendant's presentence
19 report, it is noted that numbered paragraph 4 of the report states that following the defendant's arrest
20 in the Dominican Republic, "his [Sacco's] operation relocated to San Jose, Costa Rica." This seems
21 to imply that today's CRIS is, or may still be, Defendant Sacco's business. Although irrelevant to
22 present Sentencing Guidelines offense level calculations, such is not correct. Subsequent to the
23

24
25 ⁴In Truesdale, at p. 448, the defendant's foreign sports book "went to great effort to make
26 sure that their operation was legal. They set up offshore offices and consulted with lawyers in the
27 United States and abroad on the legality of their enterprise, they furnished the Caribbean local offices
28 with desks and telephones and staffed them with personnel to accept international phone wagers . . .
and widely [advertised]." This, of course, is highly similar to the operations of CRIS. In Truesdale,
at page 449, the court concluded that the applicable underlying statute prohibited recording,
receiving, and forwarding bets and that "where and how the money is paid out is irrelevant." The
court then reversed the defendant's convictions on all counts.

1 indictment and arrest of the Defendant Sacco and four others in 1992, the operation in the Dominican
2 Republic closed down. A portion of those who were unindicted returned to the United States where
3 they began a small operation in Santa Monica, California, headed by an individual named Harry Kraft.
4 When the Santa Monica location was raided, Harry Kraft moved to Caracas, Venezuela, where he
5 established a company which employed a number of the former Dominican Republic employees who
6 had been employed by Defendant Sacco. The Caracas operation, still headed by Harry Kraft,
7 subsequently moved to San Jose, Costa Rica, based on the advice of attorneys there that it could
8 legally operate. During this period, approximately 1994-1998, the Defendant Sacco was in federal
9 custody in either the San Francisco area, or (following his sentencing) in Boron, California, and
10 Sheridan, Oregon. While the defendant was so incarcerated, in fact, Harry Kraft was apprehended as
11 a result of his setting up the illegal Santa Monica gambling operation. As part of his resultant plea
12 agreement, he underwent a debriefing by investigators from the Orange County District Attorney's
13 Office and acknowledged that the operation in Costa Rica [CRIS] had been set up by himself and was
14 his own business. Today, Harry Kraft is no longer associated with CRIS, and the company has long
15 outgrown him. Because CRIS, after his release from prison, employed Defendant Sacco to set up its
16 legal sports book in the Juragua Casino in Santo Domingo, Dominican Republic,⁵ the F.B.I.,
17 apparently, in its recitations for the presentence report, and because of the presence at CRIS of
18 various of the defendant's prior association acquaintances in the gaming business, continues to refer
19 to CRIS as "the Sacco organization." When Tommy Lasorda was dismissed as manager of the Los
20 Angeles Dodgers, but later rehired for Dodger public relations purposes, people continued to refer to
21 the team as "Tommy Lasorda's Dodgers." So it is, it would appear, with Ronald Sacco. The
22 defendant has no title at CRIS and is considered a consultant. It is not disputed that he occupies the
23 equivalent of an executive position and his knowledge of the gaming industry throughout the world is
24 a substantial company asset. Even today, however, without the defendant, CRIS continues to operate
25 at full capacity, expanding its operations throughout the world. While the defendant wishes to

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27 _____
28 ⁵This casino, it is noted, is licensed, legal, and run in conjunction with the Ramada Inn Hotel
chain.

1 acknowledge his activities to the court, the court should also understand the genesis of the F.B.I.'s
2 characterization.

3 IV.

4 THE DEFENDANT'S CRIMINAL HISTORY CATEGORY

5 The literal calculation of the presentence report, which is not here disputed and appears in
6 numbered paragraphs 59-61 of the report, places Defendant Sacco in Sentencing Guidelines Criminal
7 History Category IV. Assuming the defendant's correct offense level to be a 13, a Criminal History
8 Category IV subjects him to a sentence of 24-30 months. The Criminal History Category is a result
9 of several factors. First is the defendant's former involvement in a bookmaking group during 1987
10 which operated in California and Nevada. The defendant was arrested on November 3, 1988, entered
11 a plea of guilty and was sentenced to three years imprisonment. He was paroled on November 3,
12 1989, after serving a term of one year and one week. Because the sentence was in excess of one year
13 and one month, and because the length of the sentence extended it into the 15-year period prior to the
14 Defendant's present violation, a literal reading of Guidelines § 4A1.1 is equated to 3 points on the
15 Criminal History chart.

16 In addition to his Las Vegas conviction, Defendant Sacco has acquired 3 Criminal History
17 Category points as a result of his 1994 San Francisco conviction (via a guilty plea) in which he
18 received a sentence of 68 months. He was released from custody on May 15, 1998, when he began
19 service of his 3 year term of supervised release. Because this sentence was in excess of 1 year and 1
20 month, and because it was within the past 15 years, Guidelines § 4A1.1(2) again calls for 3 Criminal
21 History Category points.

22 Finally, pursuant to Guidelines §§ 4A1.1(d) and 4A1.1(e), because the defendant's latest
23 conviction was committed while he was on supervised release and less than 2 years after release from
24 imprisonment, 3 more points are added to his Criminal History Category. This makes a total of 9;
25 equating to a Criminal History Category of IV, and a resultant sentence of 24-30 months.

1 conviction would not even be counted as its conviction Guideline recognition would have expired in
2 November of 1999 pursuant to § 4A1.2(e).⁷

3 4) The defendant's prior 1994 sentence imposed in San Francisco for mere gambling
4 activity was more than double that allowable under present day sentencing guidelines. Subsequent to
5 the time of the defendant's 1994 sentencing, the Senate finally adopted the recommendation of the
6 Sentencing Commission, first made in or about 1993, and based on more than 100 examples of
7 inequities, that the money laundering guidelines be amended, in cases where the laundering was a part
8 of, or incidental to, the criminal activity which engendered the laundering. Pursuant to the
9 amendment now in effect, it is the underlying activity in such cases which presently determines the
10 appropriate Guidelines calculation.

11 The reason for the amendment is particularly relevant to the issue of whether the defendant's
12 1994 jail sentence was an equitable one. The pertinent portion of the Sentencing Guidelines money
13 laundering commentary reads as follows:

14 The statute covered by this guideline is part of the Anti-Drug Abuse
15 Act of 1986, . . . In keeping with the clear intent of the legislation, this
16 guideline provides for substantial punishment . . . Narcotics trafficking
is included as a factor because of the clearly expressed Congressional
interest to adequately punish persons involved in that activity.

17 In United States v. Smith, 186 F.3d 290, 298 (3d Cir. 1999), the court noted that a "heartland"
18 analysis should include reference to the statute of conviction and that the background of the
19 laundering guidelines "suggests that its heavy penalty structure was addressed to the activity detailed
20 in the statute's legislative history – namely, the money laundering associated with large scale drug
21 trafficking and serious crime."

22 Similarly, the Sentencing Commission's own pronouncements pointedly recognized that the
23 money laundering guidelines had created disproportionately high sentences not tied to the seriousness
24 of the underlying conduct in contravention of the interests of the drafters. The Commission found,
25

26 ⁷This section provides that a sentence of less than 1 year and 1 month, for Guidelines
27 recognition purposes, expires unless it occurs within 10 years of the commencement of the instant
28 offense. Defendant Sacco was released from custody in the Las Vegas case on November 13, 1989,
more than 10 years prior to the activity which led to his present guilty plea conviction.

1 for example, that “the broad and inconsistent use of money laundering charges, coupled with an
2 inflexible, arbitrarily determined guideline structure, [has] resulted in substantial unwarranted
3 disparity and disproportionality in the sentencing of money laundering conduct.”⁸ In fact, the
4 Commission stated that the penalty provisions compelled severe sentences for “money laundering
5 conduct so attenuated as to be virtually unrecognizable as the type of conduct for which the original
6 money laundering guidelines were drafted.”⁹ The Commission advised that it chose a high offense
7 level for laundering to punish two types of activity: “1) situations in which ‘laundered’ funds derived
8 from serious underlying criminal conduct such as a significant drug trafficking operation or organized
9 crime, and 2) situations in which the financial transaction was separate from the underlying crime and
10 was undertaken to either a) make it appear that the funds were legitimate, or b) to promote additional
11 criminal conduct by reinvesting the funds in additional criminal conduct.”¹⁰ (Emphasis added)

12 It was based on heavy criticism from both the courts and commentators about the harshness
13 of the money laundering calculations in many cases, as well as an extensive study of sentencing results
14 under the old guidelines. That caused the Sentencing Commission to propose amendments to the
15 money laundering guidelines. The proposed guidelines simply have tied the punishment for money
16 laundering to the level of punishment for the underlying crime. Under the proposals, according to the
17 Commission, fair penalties should be “more proportionate to both the seriousness of the underlying
18 criminal conduct from which the laundered funds were derived and to the nature and seriousness of
19 the laundering conduct itself.”¹¹ The proposed guideline changes “were also designed to avoid
20 arbitrarily determined, heightened penalty levels in those situations where a financial transaction may
21 technically violate the money laundering statutes but [do] not present additional societal harm
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23

24 ⁸Report to the Congress: Sentencing Policy for Money Laundering Offenses, including
25 Comments on Department of Justice Report, United States Sentencing Commission (Sept. 18, 1997)
p. 9.

26 ⁹Id. at 6-7.

27 ¹⁰Id. at 4.

28 ¹¹Id. at 2.

1 sufficient to merit substantially more severe sanctions than those more appropriate for the underlying
2 offense from which the illicit funds were generated.”¹²

3 Although Congress originally disapproved the proposed amendment,¹³ it did not indicate that
4 courts could not consider downward departures on the grounds raised by the Sentencing Commission
5 and such was precisely how some courts began to deal with the Sentencing Guidelines money
6 laundering inequities.¹⁴ In fact, the House Report recognized that “the application of the current
7 guidelines to receipt and deposit cases, as well as to certain other cases that do not involve
8 aggravated money laundering activity, may be problematic.”¹⁵ (Emphasis added) Congress’ initial
9 concern was that the “broad changes” proposed would “send a dangerous message that money
10 laundering associated with drugs and other serious crimes is not viewed as the grave offense it once
11 was.”¹⁶ The Justice Department itself, consistent with the position taken by the Sentencing
12 Commission and Congress, concluded that incidental money laundering activity should not be
13 prosecuted. When Congress asked the Justice Department to report on its money laundering
14 prosecution practices, the Department responded that the money laundering statutes “should not be
15 used in cases where the money laundering activity is minimal or incidental to the underlying crime.”¹⁷

16 Thereafter, in a variety of appellate decisions, where the Justice Department wavered from its
17 own stated policies and money laundering charges were brought for incidental financial transactions
18 involving crimes other than narcotics trafficking or organized crime, the courts often granted
19 departures to address the disproportionately harsh application of the laundering guidelines to the
20 conduct. Among the illustrative cases dealing with this issue is the above cited Smith decision in the

21 _____
22 ¹²Id.

23 ¹³See Act of October 30, 1995, Pub. L. No. 104-38 at 1, 109 Stat. 334.

24 ¹⁴See H.R. Rep. No. 104-272, at 14-15, reprinted in 1995 U.S.C.C.A.N. 335, 348-49.

25 ¹⁵Id. at 348.

26 ¹⁶Id.

27 ¹⁷See Department of Justice Report for the Senate and House Judiciary Committees on the
28 Changing of Plea Practices of Federal Prosecutions with Respect to the Offense of Money
Laundering, at 14 (June 17, 1996).

1 Third Circuit. There, the court analyzed a defendant's money laundering conviction which was based
2 on checks sent to the defendant's creditors, as opposed to himself, as part of a
3 kickback/embezzlement scheme. The court found that this "paper trail" was conduct inconsistent
4 with planned concealment and that the money laundering activity, when viewed against the entire
5 course of conduct, was an "incidental by-product" of the kickback scheme. Accordingly, the court
6 ruled that the defendant's efforts towards a cover-up "fell far short of the large scale money
7 laundering or serious crime contemplated by the Sentencing Commission . . ." The court concluded,
8 without even employing the use of the guideline's downward departure mechanism, by directing the
9 use of the fraud guidelines rather than those for money laundering reasoning that to do otherwise in a
10 routine fraud case would be completely inequitable and would let the "tail wag the dog."

11 Other courts reached similar conclusions. Of particular note is United States v. Threadgill,
12 172 F.3d 357 (5th Cir. 1999), where a district court's downward departure from the money laundering
13 guidelines was upheld in a gambling case. The Fifth Circuit found that the defendant's money
14 laundering activities, consisting of financial transactions involving the negotiation of checks, made out
15 to fictitious payees received from losing bettors, were not within the heartland of money laundering
16 cases because this activity was merely incidental to the gambling operation and the laundered
17 proceeds were not used to further other criminal activities. The behavior involved in the Threadgill
18 case, of course, is virtually identical to the money laundering aspects of both the Defendant Sacco's
19 1993 San Francisco conviction, and his present one. The Defendant Sacco is only a bookmaker, pure
20 and simple.

21 In United States v. Woods, 159 F.3d 1132, 1135-36 (8th Cir. 1998), the Eighth Circuit
22 affirmed a district court's downward departure from the money laundering guidelines. In Woods, the
23 laundering activity consisted of the defendant depositing a check into her husband's bank account as
24 part of her scheme to commit bankruptcy fraud. The court relied on virtually the same reasoning as
25 did the court in Smith in again focusing on the proposition that the magnitude of the penalties under
26 the money laundering guidelines was generally reserved for laundering activity connected with large
27 scale narcotics trafficking, organized crime, and aggravated laundering activity. The Woods court
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1 reasoned that the defendant's deposit of the check into her husband's account did not constitute the
2 type of "serious money laundering conduct contemplated by the Sentencing Commission meriting the
3 severe penalties [under the laundering guidelines]."

4 In United States v. Caba, 911 F.Supp. 630 (E.D.N.Y. 1996), aff'd, 104 F.3d 354 (2d Cir.
5 1996), the court granted a downward departure from the money laundering guidelines to the
6 guidelines for food stamp fraud. The court found, at page 636, that the "money laundering
7 computations are derived from the guidelines relationship to drug crimes; it is that relationship which
8 drives the high guideline level. . . ." In this case, according to the decision at page 633, the
9 Government actually conceded at oral argument that "employment of the [money laundering] statute
10 has almost always been in drug cases." The court ruled, at page 638, that although the defendant's
11 conduct fell within the literal definition of money laundering, the conduct there did not embrace the
12 "heartland" of such an offense: "It would be completely contrary to the general purposes of the
13 sentencing guidelines to exponentially increase the seriousness of the defendant's criminal conduct by
14 employing the money laundering guidelines as a basis for calculating an appropriate and fair
15 sentence."

16 This approach was even found to be appropriate in narcotics cases. In United States v.
17 Skinner, 946 F.2d 176 (2d Cir. 1991), the Second Circuit held that the district court did have
18 authority, via a § 5K2.0 downward departure, to sentence a defendant convicted of money laundering
19 in accordance with the guidelines applicable to the underlying offense where the laundering was a part
20 of the underlying violations. In Skinner, the money laundering charges were based on the defendant's
21 cashing of checks obtained from cocaine sales, and the court pointedly found that the financial
22 transactions "were entered into with the intent to promote the narcotic trafficking conspiracy alleged
23 in the indictments." The activity which is the subject of the Defendant Sacco's violation, of course, is
24 light years less egregious than that in Skinner and far more deserving of departure treatment.¹⁸

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27 ¹⁸Other decisions exhibiting the same type of reasoning as those set out above include: United
28 States v. Ross, 210 F.3d 916 (8th Cir. 2000); United States v. Ford, 184 F.3d 566 (6th Cir. 1999);
United States v. Hemmingson, 157 F.3d 347 (5th Cir. 1998); and United States v. Buchanan, 987
F.Supp. 56 (D. Mass. 1997).

1 In sum, based on the analysis of the above-cited cases, and others, and based on the more than
2 10 years of increasing and documented concerns about fairness expressed by the Sentencing
3 Commission itself, the Sentencing Guidelines money laundering calculation amendment eliminated
4 increased penalties for technical and incidental laundering activities in cases such as violation of the
5 federal gambling statute. Situations like this defendant's 1994 sentence which had a Sentencing
6 Guidelines offense level calculation of 13 for gambling, and a level of 23 for the defendant's
7 involvement (vicarious as it was) in the cashing of losing bettors' checks at a local pawn shop have
8 now been recognized by the Congress, by virtue of the money laundering amendment, as
9 inappropriate enhancing of an otherwise equitable Guidelines Sentence. In effect, the defendant was
10 sentenced to 38 months too much. Had the sentence for the defendant's gambling activities in the
11 early 1990's been one which Congress has now determined is the fair one for such behavior, he would
12 have been discharged from custody some three years earlier and his three-year supervised release
13 term would have expired prior to the activities in the present case. Accordingly, not only did the
14 defendant previously spend too much time in jail, but under the standards now recognized as more
15 fair, the 3 criminal history category points which have been imposed for violating supervised release
16 pursuant to Guidelines §§ 4A1.1(d) and 4A1.1(e)¹⁹ would be eliminated from consideration in the
17 present case.

18 5) In 1995, the defendant assisted the Los Angeles Office of the F.B.I. in a money
19 laundering case in the Central District of California which led to the conviction and jail sentence of a
20 subject of organized crime squad Special Agent Charles Jones. It was information voluntarily
21 supplied by Defendant Sacco to the F.B.I. and Special Agent Jones, and by two other cooperating
22 witnesses identified for and directed to the F.B.I. by the defendant, which was directly responsible for
23 the resulting Los Angeles conviction. While such assistance would ordinarily result in a Guidelines
24 § 5K1.1 downward departure for substantial assistance to federal law enforcement, the defendant was
25 ineligible under Rule 35(b) of the Federal Rules of Criminal Procedure for such a departure because
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27 ¹⁹These 2 criminal history points are discussed in numbered paragraph 61 of the presentence
28 report.

1 his assistance took place more than one year after his February 1994 San Francisco sentencing.
2 Despite ineligibility for § 5K1.1 consideration, defendant's assistance demonstrates his lack of danger
3 to the community, his general willingness and assistance to law enforcement (especially in non-
4 gaming matters), and the belief of at least some portions of the F.B.I. that the defendant can be both
5 trusted and credible.

6 6) In further support of the proposition that the defendant has been, in a vast number of
7 instances, a valuable asset to law enforcement generally, is the accompanying under seal submission
8 detailing the defendant's assistance in various matters involving activity far more heinous than the
9 simple consensual type gambling activity in which the defendant has personally participated.

10 7) Of the defendant's original co-defendants, Albert Flynn, Joseph Battaglieri, Bobby
11 Riggs, Jr., and Munson Fong, all of which were more directly involved in this case's gambling
12 violations in California than Defendant Sacco, not one was sentenced to jail for the violations
13 committed with this defendant. As noted in numbered paragraph 1 of the presentence report, Flynn
14 received a sentence of 5 years probation, Riggs 3 years probation, Battaglieri 3 years probation, and
15 Fong 3 years probation. If the disparity in sentences of co-defendants can be a basis for downward
16 departure in offense levels,²⁰ surely it may be a factor in evaluating the seriousness of a defendant's
17 criminal behavior and his dangerousness, vis-a-vis the community.

18 8) The defendant has voluntarily agreed to pay a fine of \$200,000 which is high above
19 the maximum fine of \$30,000 for the violations here which may be imposed pursuant to Guidelines
20 § 5E1.2. This money, of course, will be filtered back into the criminal justice system for enforcement
21 efforts generally and to assist the courts.

22 9) In addition to the factors enumerated above which may individually indicate that the
23 Criminal History Category of IV highly overstates this defendant's dangerousness to the community,
24 the combination of the 7 above-enumerated factors appears to indicate that this defendant should be
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26 ²⁰See, *United States v. Daas*, 198 F.3d 1167, 1180-81 (9th Cir. 1999) (Guidelines do not
27 prohibit departures on the basis of disparate co-defendant sentences), and *United States v. Caperna*,
28 251 F.3d 827, 831-32 (9th Cir. 2001) (decision whether to depart based on sentencing disparity is
properly left to sound discretion of sentencing judges).

1 sentenced, pursuant to the court's § 4A1.3(e) discretion, in Criminal History Category II or, at the
2 highest in Category III, rather than Category IV. Such would far more equitably establish the
3 seriousness of this defendant's behavior, recognize his contributions to the criminal justice system,
4 credit his service of excessive jail time as a result of his 1993 San Francisco conviction, and more
5 fairly equate the defendant's sentences with those of his co-defendants, all of which are lifelong
6 bookmakers and none of which received even one day of jail time.

7 V.

8 THE APPROPRIATE SENTENCE

9 Defendant Ronald Sacco is a 60 year old man who is married and has four daughters. While
10 three of his daughters are grown, Veronica, who is six years of age, resides with her mother in San
11 Jose, Costa Rica. As noted in the presentence report at numbered paragraph 66, the defendant pays
12 monthly child support in the amount of \$1,000. Although virtually a lifelong gambler/bookmaker, the
13 defendant is far from a danger to the community. Such seems especially true in present time where
14 gaming has been legitimized in countless forms in virtually every state and Indian reservation in this
15 country, and in almost every foreign jurisdiction as well. While the defendant participated in activity
16 which he does not dispute was illegal, the company with which the defendant is associated is a
17 legitimate one which routinely engages in licensed and legal gaming activities throughout the world.
18 The defendant is current on the filing of his tax returns, experiences a variety of increasingly nagging
19 health problems, and (as set out in his under seal filing) has often been an assert to law enforcement
20 rather than a significant criminal. As of the date of sentencing, he will already have served some 9
21 months in custody; including time in Marin County Jail and a Costa Rican prison facility awaiting
22 return to the United States. As the court undoubtedly knows, such incarceration is far more difficult
23 than that in regular federal institutions operated by the Bureau of Prisons which are usually camp
24 locales for less serious offenses such as bookmaking.

25 In conversations with the drafter of the defendant's presentence report, undersigned counsel
26 has been informed that the U.S. Probation Office is recommending a sentence of the low end of the
27 applicable offense level. Such a recommendation, of course, comes without knowledge of the extent
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1 of defendant's pro-law enforcement activities as detailed in the under seal submission; activities which
2 unquestionably would seem to reflect favorably. If the court determines that the most appropriate
3 Criminal History Category within which the defendant should be sentenced is as II or a III (see pages
4 7-15, supra), the defendant would be eligible for a sentence of from 15 to 21 months (Criminal
5 History Category II) or 18 to 24 months (Criminal History Category III).

6 VI.

7 CONCLUSION

8 Based on all of the above, it is respectfully requested that the defendant be sentenced in a
9 Criminal History Category less than a IV, and that he receive the low-end term which has been
10 recommended by the United States Probation Office.

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DATED: March 20, 2003

Respectfully submitted,



JAMES D. HENDERSON
Attorney for Defendant
Ronald Sacco

