Nos. 03-4184, 03-4490, 03-4542, 03-4560, 04-2912

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
Appellee

v.

JAMES C. FALLON,
Appellant in No. 03-4184

PAUL J. LEAHY,
Appellant in No. 03-4490

TIMOTHY SMITH,
Appellant in No. 03-4542

DANTONE, INC.,
Appellant in No. 03-4560

KENNARD GREGG
Appellant in No. 04-2912

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Joshua L. Dratel
Joshua L. Dratel, P.C.
14 Wall Street, 28th Floor
New York, New York 10005
(212) 732-0707

Peter Goldberger
50 Rittenhouse Place
Ardmore, Pennsylvania 19003
(610) 649-8200

Attorneys for NACDL

– Of Counsel –

Erik B. Levin
Kristian K. Larsen

Table of Contents

Table of Contents i

Table of Authorities ii

Statement of Interest 1

Argument

POINT I

THE FIFTH AND SIXTH AMENDMENTS
GUARANTEE CRIMINAL DEFENDANTS THE RIGHTS
TO HAVE THE FACTS REQUIRED TO TRIGGER
CRIMINAL FORFEITURE AND RESTITUTION PENALTIES
FOUND BY A JURY AND BEYOND A REASONABLE DOUBT 2

A. *Criminal Forfeiture Increases the Maximum Penalty Otherwise Available* 5

B. *Restitution Is a Form of Criminal Punishment* 7

C. *Restitution Increases the Maximum Sentence Otherwise Available* 9

POINT II

LIBRETTI v. UNITED STATES IS NOT APPLICABLE 9

Conclusion 12

Statement Pursuant to Rule 32(a)(7)(C), Fed.R.App.P.
and Rule 31.1(c), L.A.R.

Table of Authorities

Cases

Apprendi v. New Jersey, 530 U.S. 466 (2000) 2,4,

Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004) 2,3,4,5,6,8,9,11

Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991) 6

Hughey v. United States, 495 U.S. 411 (1990) 7

Jones v. United States, 526 U.S. 227 (1999) 2,4

Libretti v. United States, 516 U.S. 29 (1995) 9,10,11

Northwest Airlines, Inc. v. Transport Workers Union,
451 U.S. 77 (1981) 6

Ring v. Arizona, 536 U.S. 584 (2002) 2,4

United States v. Bajakajian, 524 U.S. 321 (1998) 5,6

United States v. Bearden, 274 F.3d 1031 (6th Cir. 2001) 9

United States v. Booker, 543 U.S. __, 125 S.Ct. 738 (2005) . . . 2,3,4,5,6,8,9,10,11

United States v. Cianci, 02-2158 (1st Cir. April 5, 2005) 5

United States v. Croce, 334 F. Supp.2d 781 (E.D. Pa. 2004),
adhered to on reconsideration, 345 F. Supp.2d 492 (E.D. Pa. 2004),
on reconsideration relating to jurisdictional issue, 355 F. Supp.2d 774
(E.D. Pa. 2005) 6

United States v. Edwards, 162 F.3d 87 (3d Cir. 1998) 7,8

United States v. Fruchter, 411 F.3d 377 (2d Cir. 2005) 4

United States v. Garcia-Castillo, 03-2166, 2005 WL 327698 (10th Cir. Feb. 11, 2005) 5

United States v. Gasanova, 332 F.3d 297 (5th Cir. 2003) 4

United States v. McDaniel, 398 F.3d 540 (6th Cir. 2005) 5

United States v. Malouf, 377 F. Supp.2d 315 (D. Mass. 2005) 4

United States v. Messino, 382 F.3d 713 (7th Cir. 2004) 4

United States v. Najjar, 300 F.3d 466 (4th Cir. 2002) 4

United States v. Palma, 760 F.2d 475 (3d Cir. 1985) 7

United States v. Ross, 279 F.3d 600 (8th Cir. 2001) 7,9

United States v. Sahlin, 399 F.3d 27 (1st Cir. 2005) 10

United States v. Satterfield, 743 F.2d 827 (11th Cir. 1984) 7

United States v. Serrano-Beauvaix, 400 F.3d 50 (1st Cir. 2005) 10

United States v. Sleight, 808 F.2d 1012 (3d Cir. 1987) 8

United States v. Syme, 276 F.3d 131 (3d Cir. 2002) 7,9

United States v. Visinaiz, 344 F. Supp.2d 1310 (D. Utah 2004) 5

United States v. Voigt, 89 F.3d 1050 (3d Cir. 1996) 6

United States v. Watchman, 749 F.2d 616 (10th Cir. 1984) 7

Statutes

Amend. V, U.S. Const. 2,12

Amend. VI, U.S. Const. 2,11,12

Amend. VII, U.S. Const. 8

18 U.S.C. §981 5

18 U.S.C. §982 5

18 U.S.C. §982(a)(1) 5

18 U.S.C. §982(a)(2) 5,6

18 U.S.C. §982(b)(1) 6

18 U.S.C. §3663 7

18 U.S.C. §3663A 3,7,8

21 U.S.C. §853(p) 6

31 U.S.C. §5332(b)(4) 6

Rule 7, Fed.R.Crim.P. 11

Rule 11, Fed.R.Crim.P. 10,11

Rule 31, Fed.R.Crim.P. 11

Rule 32, Fed.R.Crim.P. 11

Rule 32.2, Fed.R.Crim.P. 3,4,6,11

Rule 32.2(b)(1), Fed.R.Crim.P. 3

Rule 32.2(b)(4), Fed.R.Crim.P. 3

Other Authorities

S. Rep. No. 97-532, 97th Cong., 2d Sess. 32, reprinted in
1982 U.S. Code Cong. & Ad. News 2515 7,8

Nancy J. King & Susan R. Klein, *Beyond Blakely*, 16 Fed. Sent. R. 316,
2004 WL 2235851 (June 2004) 3

Susan R. Klein, *The Return of Federal Judicial Discretion in Criminal Sentencing*, 39 Val. U.L.Rev. 693 (2005) 3

David B. Smith, *Prosecution and Defense of Forfeiture Cases,* (rev 2005) . . . 3,6

With the consent of the parties, and pursuant to order of the Court, the National Association of Criminal Defense Lawyers (hereinafter "NACDL") respectfully submits this Memorandum of Law *Amicus Curiae* in support of the Appellants, upon *sua sponte* rehearing *en banc.*

Statement of Interest

NACDL is a District of Columbia non-profit organization whose membership comprises over 12,000 lawyers and 28,000 affiliate members representing every state. NACDL was founded in 1958 to promote study and research in the field of criminal law; to disseminate and advance knowledge of the law in the area of criminal practice; and to encourage the integrity, independence, and expertise of defense lawyers in criminal cases.

NACDL is the only national bar organization working on behalf of public and private criminal defense lawyers. The American Bar Association recognizes the NACDL as an affiliated organization and awards it full representation in the ABA House of Delegates. NACDL is dedicated to the preservation and improvement of our adversary system of justice.

The NACDL is vitally interested in restraining the scope of criminal penalties within their proper statutory and constitutional limits.

Argument

POINT I

THE FIFTH AND SIXTH AMENDMENTS GUARANTEE CRIMINAL DEFENDANTS THE RIGHTS TO HAVE THE FACTS REQUIRED TO TRIGGER CRIMINAL FORFEITURE AND RESTITUTION PENALTIES FOUND BY A JURY AND BEYOND A REASONABLE DOUBT

The Supreme Court's line of decisions interpreting the Fifth and Sixth Amendments[1] is clear: a defendant has the right to have a jury determine, beyond a reasonable doubt, any fact required to increase the criminal penalty. *Blakely*, 124 S.Ct. at 2537 ("[w]hen a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment,'. . . and the judge exceeds his proper authority") (citation omitted); *Booker*, 125 S.Ct. at 756 ("[a]ny fact . . . which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt") (citation omitted).[2] The facts necessary to support a

---

[1] *See Jones v. United States*, 526 U.S. 227 (1999); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Ring v. Arizona*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531 (2004); *United States v. Booker*, 543 U.S. __, 125 S.Ct. 738 (2005).

[2] Indeed, since forfeiture and restitution are plainly additional penalties not authorized by a jury verdict solely on the issue of guilt, eminent commentators

criminal conviction (that is, the elements of the offense) are necessary but not sufficient to support either forfeiture or restitution as part of the sentence. Accordingly, neither penalty can be imposed unless additional facts are proven beyond a reasonable doubt and (absent a valid waiver) by a jury.

Given the importance our society rightly attaches to the protection of private property rights, it seems almost obtuse to maintain that "a lone employee of the State[,]" *Blakely*, 124 S.Ct. at 2543, may constitutionally deprive a defendant of all his property without the safeguard of a jury to find the facts on which such an important judgment rests. That error is compounded in the forfeiture context because, under Rule 32.2, Fed.R.Crim.P., that "lone employee" is the *prosecutor*, who chooses whether the defendant will have a jury trial on forfeiture. *Compare* Rule 32.2(b)(1), Fed.R.Crim.P. *with* Rule 32.2(b)(4), Fed.R.Crim.P.

Instead of acknowledging this sea change in sentencing law, the government

---

have noted that *Apprendi* and its progeny require that the facts required to trigger criminal forfeiture and restitution be proven to a jury beyond a reasonable doubt. David B. Smith, *Prosecution and Defense of Forfeiture Cases,* 14.03A, at 14-52 to 14-55 (rev 2005) (forfeiture); Nancy J. King & Susan R. Klein, *Beyond Blakely*, 16 Fed. Sent. R. 316, 2004 WL 2235851 (June 2004) ("because judges may not impose forfeiture of defendant's assets without specific factual findings that are not . . . part of the underlying conviction, these facts must be determined by a jury beyond a reasonable doubt"); Susan R. Klein, *The Return of Federal Judicial Discretion in Criminal Sentencing*, 39 Val. U.L.Rev. 693, 722 n.138 (2005) (*Booker* invalidates restitution orders the Mandatory Victim's Restitution Act ("MVRA"), 18 U.S.C. § 3663A).

retreats to arguments made in the initially successful, but ultimately discredited, defense of the United States Sentencing Guidelines after *Apprendi* and *Ring* (and, in some instances, even after *Blakely*). The government argues that *Apprendi* and *Booker* do not apply because they require a jury finding only when the sentence exceeds the statutory maximum penalty and the criminal forfeiture and restitution statutes have no maximum penalty.[3] Yet those arguments, and the Guidelines, were invalidated by *Booker* – just as the string of cases running from *Jones* through *Booker* does the very same to Rule 32.2 and the restitution statutes.

The focus on "statutory maximums," as opposed to the punishment authorized by the jury's verdict alone, misses the point of *Jones*, *Apprendi*, *Blakely*, and *Booker* entirely. *See United States v. Malouf,* 377 F. Supp.2d 315, 324 (D. Mass. 2005) (Supreme Court's "concern [in *Blakely*] was not simply about a fact's effect on the statutory maximum, but more generally, about its effect on punishment"). The Court made it unmistakably clear in *Blakely* and *Booker*, that the principle enunciated in *Apprendi* and its progeny is not nearly so narrow or technical, and that the "statutory maximum" is only what is authorized by the

---

[3] *See, e.g., United States v. Fruchter*, 411 F.3d 377, 382-3 (2d Cir. 2005) *United States v. Messino,* 382 F.3d 713, 714 (7th Cir. 2004); *United States v. Gasanova,* 332 F.3d 297, 300-1 (5th Cir. 2003); *United States v. Najjar,* 300 F.3d 466, 486 (4th Cir. 2002).

jury's verdict. *See Blakely,* 124 S.Ct. at 2537; *Booker*, 125 S.Ct. at 756 [both quoted **ante**, at 2].[4]

A. *Criminal Forfeiture Increases the Maximum Penalty Otherwise Available*

Criminal forfeiture is a form of punishment. *United States v. Bajakajian*, 524 U.S. 321, 328 (1998) ("[w]e have little trouble concluding that the forfeiture of currency ordered by [18 U.S.C.] §982(a)(1) constitutes punishment"); *and compare* 18 U.S.C. §981 (civil forfeiture) *with* 18 U.S.C. §982 (criminal forfeiture). It is equally plain that criminal forfeiture increases the maximum sentence otherwise available for the underlying offense, and that the forfeiture penalty is available only after proof of two additional facts: the defendant has "property" (or an "interest in property"), 18 U.S.C. §982(a)(2); and the property "constitute[s] or derive[s] from, proceeds . . . obtained directly or indirectly, as the

---

[4] Since *Blakely,* several courts have recognized that the current criminal forfeiture framework may be constitutionally infirm. *See United States v. Cianci,* 02-2158 (1st Cir. April 5, 2005) (vacating forfeiture sentence and remanding to the district court for resentencing under *Booker*); *United States v. Visinaiz,* 344 F.Supp.2d 1310 (D. Utah 2004) (Cassell, J.) ("with the appearance of *Blakely,* matters such as forfeiture . . . which had once seemed relatively straight-forward suddenly became more complicated"). *See also United States v. McDaniel*, 398 F.3d 540, 554, n.12 (6th Cir. 2005) ("there is some question as to whether *Booker* requires us to reconsider our analysis of criminal defendant's jury trial rights with respect to restitution"); *United States v. Garcia-Castillo*, 03-2166, 2005 WL 327698, at *5 n.4 (10th Cir. Feb. 11, 2005) ("whether restitution is subject to *Apprendi*, *Blakely*, and *Booker* [is] by no means [a] settled question[] in courts around the country").

result of such violation." *Id.* The jury verdict alone does not authorize any forfeiture at all; without proof of these two additional facts, the maximum punishment for the offense is imprisonment, a fine, and a special assessment. That is the end of the matter under *Blakely* and *Booker*.[5]

---

[5] The trial court in *United States v. Leahy, et al.*, entered a personal money judgment against the appellants despite the fact that neither the criminal forfeiture statute, 18 U.S.C. §982(a)(2), nor Rule 32.2, Fed.R.Crim.P., authorizes the entry of a personal money judgment. *See United States v. Croce*, 334 F. Supp.2d 781 (E.D. Pa. 2004) (personal money judgments are not authorized by the criminal forfeiture statutes or Rule 32.2), *adhered to on reconsideration*, 345 F. Supp.2d 492 (E.D. Pa. 2004), *on reconsideration relating to jurisdictional issue*, 355 F. Supp.2d 774 (E.D. Pa. 2005).

Instead of authorizing the imposition of personal money judgments, Congress enacted the substitute asset provision of 21 U.S.C. §853(p), made applicable here by 18 U.S.C. §982(b)(1), for those instances in which the tainted assets are no longer available for forfeiture. The availability of this remedy militates against finding an implied personal money judgment remedy. *See United States v. Voigt*, 89 F.3d 1050, 1084-87 (3d Cir. 1996) (rejecting the government's argument that the *in personam* nature of forfeiture obviates the tracing requirement); *cf. Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77, 97 (1981) ("[t]he presumption that a remedy was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement"); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) (*expressio unius est exclusio alterius*).

Moreover, the notion of a personal money judgment "ignores the basic nature of a forfeiture, whether civil or criminal. There simply cannot be a forfeiture without something to forfeit." Smith, *Prosecution and Defense of Forfeiture Cases*, ¶13.02[4], 13-39; *accord Croce*, 334 F. Supp. at 785 ("[c]ommon sense suggests that one cannot 'forfeit' something unless he first owns or possesses it"). The only reference to a "personal money judgment" in any

B. *Restitution Is a Form of Criminal Punishment*

This Court, along with the majority of the circuits, has consistently held that "[r]estitution orders made pursuant to criminal convictions [are] criminal penalties." *United States v. Syme*, 276 F.3d 131, 159 (3d Cir. 2002); *United States v. Edwards*, 162 F.3d 87, 91 (3d Cir. 1998) (restitution under the MVRA constitutes punishment for purposes of *ex post facto* analysis); *United States v. Palma*, 760 F.2d 475, 479 (3d Cir. 1985) (restitution under the Victim and Witness Protection Act ("VWPA"), 18 U.S.C. §3663, is a criminal penalty).[6] This is consistent with the Supreme Court's assessment of restitution. *See Hughey v. United States*, 495 U.S. 411, 422 (1990) (VWPA is "a criminal statute").

This Court has found restitution under both the VWPA and MVRA to be a criminal penalty by examining the plain language of the statutes and, when necessary, by looking to the legislative history. *Palma*, 760 F.2d at 479 ("legislative history [of the VWPA] amply demonstrates that Congress intended

---

of the criminal forfeiture statute is in 31 U.S.C. §5332(b)(4), which outlaws bulk cash smuggling into or out of the United States and allows for a personal money judgment in the event that substitute assets are not available.

[6] *See, e.g.*, *United States v. Ross*, 279 F.3d 600 (8th Cir. 2001) (restitution is a criminal penalty); *United States v. Watchman*, 749 F.2d 616, 617 (10th Cir. 1984); *United States v. Satterfield*, 743 F.2d 827, 837 (11th Cir. 1984) ("history is replete with references to restitution as part of the criminal sentence").

restitution to be an integral part of the sentencing process"), *citing* S. Rep. No. 97-532, 97th Cong., 2d Sess. 32, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2538; *Edwards,* 162 F.3d at 91 ("both the language and the history of the MVRA convinces us that Congress intended the restitution it mandated to be a form of criminal punishment").

Moreover, panels of this Court have repeatedly considered and rejected the government's attempt to characterize restitution as a quasi-civil remedy beyond the reach of *Blakely* and *Booker*. In *Edwards*, this Court restated its long-held view "that while restitution resembles a civil remedy and has compensatory as well as punitive aspects, neither these resemblances to civil judgments, nor the compensatory purposes of criminal restitution detract from its status as a form of criminal penalty when imposed as an integral part of sentencing." *Id.* at 92; *see also United States v. Sleight*, 808 F.2d 1012, 1020 (3d Cir. 1987) (although one purpose of restitution included compensation of victims, it remains inherently a criminal penalty).[7]

---

[7] In *Edwards*, the appellant argued (and the Court rejected) the same argument made by the government here – that restitution is a civil remedy. Although in *Edwards,* the appellant argued that because restitution was civil in nature, he was entitled to a jury trial under the Seventh Amendment, the government ironically now argues that appellants are not entitled to a jury trial because restitution is allegedly civil in nature.

C. *Restitution Increases the Maximum Sentence Otherwise Available*

Prior to *Blakely*, this Court held that although criminal restitution "constitutes 'the penalty for the crime' within the meaning of *Apprendi*," it nonetheless concluded that *Apprendi* did not apply to restitution because restitution has no statutory maximum. *Syme*, 276 F.3d at 159.[8] Yet for the same reasons discussed **ante** at 3-4, the analysis does not withstand *Blakely* and *Booker*.

Thus, it is undisputable that restitution is a penalty that increases the maximum sentence otherwise available for the underlying offense and does so only on the basis of proof of additional facts: that the offense of conviction has caused a "loss" (as defined) to a covered "victim." Absent proof of these two facts, the jury verdict alone does not authorize the court to impose a sentence which includes *any* restitution.

POINT II

LIBRETTI v. UNITED STATES IS NOT APPLICABLE

Libretti v. United States, 516 U.S. 29 (1995), is entirely inapposite because in that case *the defendant pleaded guilty to the offense*, and "agreed to forfeit numerous items of his property to the Government." *Id.* at 31. In that context,

---

[8] *See, e.g., United States v. Ross,* 279 F.3d 600, 608-609 (8th Cir. 2002); *United States v. Bearden,* 274 F.3d 1031, 1042 (6th Cir. 2001).

even after *Booker*, some courts have held that a guilty plea waives the right to insist on a jury determination (beyond a reasonable doubt) as to issues relevant to sentencing. *See, e.g., United States v. Serrano-Beauvaix*, 400 F.3d 50 (1st Cir. 2005); *United States v. Sahlin*, 399 F.3d 27 (1st Cir. 2005). Here, in contrast, appellants proceeded to trial, and contested the amount of forfeiture and restitution. With respect to restitution, *Libretti* has even less relevance because *Libretti* did not discuss restitution.

The questions presented, and answered, in *Libretti* were (a) whether a "factual basis for forfeiture exist[ed] for a stipulated asset forfeiture embodied in a plea agreement[;]" and (b) whether a special jury verdict on forfeiture could only be waived in writing, and after the defendant had been specifically advised by the District Court of the nature and extent of his rights to the special verdict. 516 U.S. at 31-32. In answering the first in the affirmative and the second in the negative, the Court in *Libretti* performed its analysis entirely under Rule 11, Fed.R.Crim.P., which is germane to guilty pleas, and not trials. 516 U.S. at 32-42.

Indeed, while noting the Advisory Committee's "assumption" that "the amount or interest or property subject to forfeiture is an element of the offense to be alleged and proved[,]" and finding that unpersuasive, the Court added that "even supposing that the Committee's assumption is authoritative evidence with

respect to the amendments to Rules 7, 31, and 32, *it has no bearing on the proper construction of Rule 11*." 516 U.S. at 41 (emphasis added). Consequently, it is indisputable that *Libretti*, to the extent it remains viable, is limited to the Rule 11 context – and even in that setting, the Court mandated a "factual nexus requirement" in order to limit government overreaching. 516 U.S. at 42. Here, that "factual nexus" was decided entirely by the judge, and by the preponderance standard. At least where the defendant has not pleaded guilty, that form of adjudication simply does not survive *Blakely* and *Booker*.[9]

Moreover, *Libretti's* brief analysis of the issue was based upon the now-rejected notion that, with the exception of the death penalty, the Sixth Amendment has no application to sentencing, and thus is no more controlling in the trial context than were the prior cases, cited by the government in *Booker*, that had previously upheld the Guidelines. *See Booker*, 125 S. Ct. at 753-54.

---

[9] Also important is the fact that Section III of the majority opinion in *Libretti*, and in which the language cited by the government appears, *was not joined by Justices Souter and Ginsburg*. 516 U.S. at 52-54 (separate opinions of Souter, J., and Ginsburg, J.). Justices Scalia and Thomas declined to join in another part of the opinion (Parts II-B and II-C). 516 U.S. at 31. It is also noteworthy that the Supreme Court has consistently declined to cite *Libretti* as precedent since it was decided.

Thus, *Libretti* is distinguishable. Even if it is not, neither Rule 32.2 nor the restitution law is saved from the inexorable logic and application of *Blakely* and *Booker*.

Conclusion

For these reasons, the Fifth and Sixth Amendments to the United States Constitution entitle a criminal defendant to proof beyond a reasonable doubt and (unless waived) a jury determination of the facts which are necessary to include any restitution or forfeiture in a criminal sentence.

Dated: 14 October 2005
New York, New York

Respectfully submitted,

/s Joshua L. Dratel

Joshua L. Dratel
Joshua L. Dratel, P.C.
14 Wall Street, 28th Floor
New York, New York 10005
(212) 732-0707
NY Bar Number 1795954

Peter Goldberger
50 Rittenhouse Place
Ardmore, Pennsylvania 19003
(610) 649-8200
PA Bar Number 22364

Attorneys for NACDL

– Of Counsel –
Erik B. Levin
Kristian K. Larsen

Statement Pursuant to Rule 32 (a) (7) (C), Fed.R.App.P. and Rule 31.1(c), L.A.R.

The undersigned hereby certifies that this brief, exclusive of the table of contents and table of authorities, uses a proportional typeface and is no more than 3,000 words, that is 2898 words. The text in the electronic version is identical to the text in the paper copies. No viruses were detected in the electronic version after it was scanned by Symantec Antivirus, Corporate Edition, version 10/12/2005, rev. 17.

DATED: New York, New York
October 14, 2005

/s Joshua L. Dratel
Joshua L. Dratel

CERTIFICATE OF SERVICE

On October 14, 2005, I served two copies of the foregoing Amicus Brief on the attorneys for each of the parties, by first class mail, postage prepaid, addressed to:

Robert A. Zauzmer, Esq.
Assistant U.S. Attorney
& Sr. Appellate Counsel
Mary E. Crawley, Esq., AUSA
615 Chestnut St., suite 1250
Philadelphia, PA 19106

David L. McColgin, Esq.
Robert Epstein, Esq.
Assistant Federal Defenders
Defender Ass'n, Fed. Court Div.
The Curtis Building, suite 545
601 Walnut Street
Philadelphia, PA 19106

Ian M. Comisky, Esq.
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103-6998

Jeffrey M. Miller, Esq.
Nasuti & Miller
Pub. Ledger Bldg., Ste. 1064
150 So. Independ. Mall West
Philadelphia, PA 19106

Robert E. Welsh, Jr., Esq.
Welsh & Recker, P.C.
2000 Market St., Suite 2903
Philadelphia, PA 19103

/s Peter Goldberger