

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

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UNITES STATES OF AMERICA	)
Plaintiff	)
	)
-v-	)
	)
	)
ALBERT E. PARISH, JR.	)
Defendant	)

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Docket No. 2:07CR00578-001DCN

**MEMORANDUM ON BEHALF OF ALBERT E. PARISH, JR.  
IN AID OF SENTENCING**

Respectfully submitted,

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June 17, 2008.

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**I.**  
**INTRODUCTION**

This memorandum and accompanying information is submitted to the Court to assist in the sentencing of Al Parish. On October 5, 2007, Mr. Parish pled guilty to two counts of Mail Fraud, in violation of 18 U.S.C. §1341, and one count of False Statements, in violation of 18 U.S.C. §1001. These charges related to Mr. Parish's involvement with the operation of Parish Economics, Inc., an investment firm which he began in 1997. In addition to his plea of guilty, Mr. Parish agreed to a forfeiture of any property, real or personal, which constituted or was derived from proceeds traceable to the mail and wire fraud offenses, pursuant to Title 18 U.S.C. §981(a)(1)(c) and Title 28 U.S.C. §2641(c).

Al Parish's guilty plea, and the events leading up to it, mark a disastrous ending to a career that was built upon the values of hard work, education, service to his community and commitment to his family. It is a unique case, as it is a financial crime motivated not by the usual factor of greed, but rather by a vain attempt to be recognized for his financial acumen. There is no dispute that Al Parish financially benefited by the operation of Parish Economics, and that he lived a lifestyle above and beyond what his teaching salary and economic consulting practice would have allowed. However, the motivation for this crime was not personal economic achievement; rather, it was an attempt to prove to investors that the academic, economic model he had built for investment purposes had a real value in the day-to-day operation of the market. For many people, he made large sums of money; however, many others will lose significant amounts of money because of his failure. He committed fraud by taking investor money and using it in various investment strategies without their knowledge or consent, and then misinformed them of the value and condition of their accounts. However, the biggest fraud of all was on himself, for falsely believing and standing by investments that had little or declining

value. His vanity and unwillingness to be perceived as a failure has caused enormous amounts of pain and suffering to the victims of his crime, which include many of his direct relatives. For this he realizes he must be punished through a term of imprisonment.

Al Parish's actions have also resulted in an incredible toll on his physical and mental health. Prior to his being charged, the strain of holding down a full-time teaching position, providing economic consulting for various entities, performing community service for a number of organizations and running Parish Economics caused a psychological overload which resulted in his collapse and hospitalization on March 29, 2007. He was taken to Trident Regional Medical Center and subsequently to MUSC Institute of Psychiatry, where he was found to have total memory loss. Following his hospitalization, he has continued to be treated for this condition, and he works daily at trying to remember events and relationships. In addition, he suffered from a heart attack in 1997, and his heart continues to have intermittent atrial fibrillation, for which he takes medication and is required to wear a heart monitor.<sup>1</sup>

Following his hospitalization and increasing memory reconstruction, Al Parish has worked tirelessly and diligently with the court-appointed Receiver and the representative of the Securities and Exchange Commission (SEC) to provide assistance in the recovery of assets and the calculation of the correct disgorgement amount to be assessed against him. As a result of his actions, the Receiver was able to identify over \$13 million in incorrect and/or fraudulent claims made against Parish Economics. This work will result in the actual victims of his failed investment strategy recovering a higher and more equitable percentage of their lost investments.

There are numerous sad ironies resulting from this case. Once a highly respected professor and valued economist who worked tirelessly with the media, Al Parish is now vilified

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<sup>1</sup> Recent episodes which led to his hospitalization on June 17, 2008, will be detailed for the Court's review in a medical addendum.

regularly by that same media as a fraudster. Although Al Parish viewed himself as a savvy investor in hard assets and collectibles, the reality is that he was defrauded by many of those same people from whom he was making substantial purchases. Finally, having worked twenty hour days assuming responsibility for basically three full-time jobs in order to support an upper-middle class standard of living, Al Parish is now unemployed and living with his wife and four children in his mother's three bedroom house.

The information in this memorandum is not submitted as an attempt to excuse Al Parish's illegal actions. He has pled guilty because he is guilty. However, in imposing sentence, we ask the Court to consider the entirety of Al Parish's life, his actions, his collateral punishments, his acceptance of responsibility and his valued and substantial cooperation.

## **II. STATEMENT OF THE OFFENSE**

In 1996, as an outgrowth of an "investment club" of professors at the College of Charleston, Al Parish formed Parish Economics LLC, which he used for investing as well as for economics consulting. From 1996 until his arrest, Parish Economics LLC made investments in stocks, bonds, futures, commodities and "hard assets". Hard assets included jewelry, antiques, art and other items of value which he believed would appreciate more rapidly than other types of investments. By 2007, Parish Economics had hundreds of investors and over \$100 million under management. Around 2001, concerned with the volatility of the stock market, Al Parish made a decision to begin putting more money into hard assets. Over a six year period, he transferred investor funds from one type of investment to another, without getting investor approval in most cases. In addition, he sent account statements to investors which showed returns that were both

inaccurate and fictitious. He also misled a major investor by fabricating fictitious brokerage account statements. Finally, he misled the SEC regarding the accounts of Parish Economics and provided false documentation to them.

Mr. Parish has accepted full and complete responsibility for his illegal actions and the harm he has caused to his investors. Ever since his release from the hospital in March of 2007 and the realization of the depth of the problems he had created with the investments of Parish Economics LLC, he has been doing all that he can to correct his harm. He has done everything in his power to cooperate with the Receiver and to get each investor as much restitution as possible. He has spent hundreds of hours analyzing documents, interpreting investor accounts, valuing hard assets and reviewing investor claims. He will continue to cooperate until final resolution is reached and all assets have been sold and monies returned to investors.

### **III.**

#### **PERSONAL AND PROFESSIONAL BACKGROUND OF ALBERT EUGENE PARISH, JR.**

##### **A) Family Background in Brief**

Albert Eugene Parish, Jr. was born in Charleston, South Carolina on August 23, 1957, to Albert and Kathleen (Jenkins) Parish. The senior Mr. Parish served in the US Navy during World War II and then worked as a truck driver delivering oil for a local gas company, Youman's Gas Company, until his retirement. Mr. Parish passed away 24 years ago at the age of 56 due to a structural defect of his heart. Mrs. Parish stayed home to raise her children when they were young and then became a kindergarten teacher and later a headmistress at St. Paul's Academy in Adam's Run. Mrs. Parish has been retired for 14 years and, at age 79, she is in moderate health, suffering from the early stages of dementia. Al is the eldest of three children. His sister, Ruth, is 46 years old and works as a paralegal in Charleston, and also runs a business boarding horses.

His younger brother John, age 45, is a supervisor for a paving company in Charleston. John is married and has two teenage daughters. The Parish's are described as a very close and loving family, devoted to one another and their Christian faith.

Al and his wife, Yolanda, have been married since December 31, 1994, and have four children, William, age 12, Genie, age 8, and 5-year-old twins, Mary Beth and Sarah Rose. The Parish's previously lived in Summerville, South Carolina, but following his arrest and the seizure of his house, have moved into Al's mother's three bedroom house where Al grew up, in Meggett, South Carolina. Al's mother-in-law, Zayda Yoder, lost her home which was attached to the Parish residence in Summerville, and often lives with Al and his family in Al's mother's home in Meggett.

#### **B) Early Childhood Years**

The Parish family has a long history in the Charleston area of South Carolina and "have been very well-respected in their community for many years."<sup>2</sup> Al's mother's family, the Jenkins, also have a long history in the Charleston area, as his grandparents had lived on the Summit Plantation, which has been in the Jenkins family for over 200 years, their entire life. Al's grandfather, John Jenkins, graduated from Clemson University and was a farmer for most of his life and was "looked up to as a leader in farming organizations." After they got married, Al's parents built their home on the plantation in 1954 on a parcel of land that was originally over 50 acres.<sup>3</sup> This is where Al and his siblings grew up.

Growing up, Al was described as "a curious child striving to learn about everything." He attended the local elementary school before transferring to St. Paul's Academy, a private school,

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<sup>2</sup>This quotation and those that follow were taken from either interviews or letters written to the Court. These letters are attached at Appendix 1.

<sup>3</sup>The property has since been subdivided into five separate lots.

for third through eighth grade. Even as a young child, his intelligence was evident. In her letter to the Court, his former teacher, Nathalie F. Wilson, recalls having Al as a student:

Young Al Parish was a student in my classes throughout elementary school. He was by far the brightest child in the class, but he never lorded his intelligence over the other children. In fact, he frequently volunteered to help them individually with difficult assignments. Other students respected him and included him in their social activities.

Al's parents instilled in him strong values and he was taught the importance of supporting your family, hard work, truthfulness and education. The church also played a central role in the Parish family's life and, as a young boy, Al served as an acolyte at his church. As Nathalie Wilson explains, "Al was reared in a nurturing Christian environment by parents well recognized for their integrity and contributions to their church and community." Al's character is reflected in his upbringing, as he is described by a relative, Juanita Brown, as "a loving, generous and...honest person. He was raised in a Christian, loving home and has always followed the example that was set before him." William W. Rutledge, Sr., a family cousin by marriage, also recalls Al's kindness as a young boy:

Kathleen and Albert instilled a strong work ethic into all of their children. I remember whenever their neighbors needed help, Al and Johnny would jump into their pickup truck and rush over. They helped to fix everything from automobiles to water pumps and even cranky septic tanks.

This generosity, open-heartedness and kindness towards others that Al exhibited as a young boy would later characterize him as an adult.

After elementary school, Al received an academic scholarship to Porter Gaud, then a private all-male high school, where he graduated with honors in 1975. Al was then admitted and enrolled as a student in the College of Charleston later that same year.

### **C) Professional Career**

Al's love of math was instilled in him by his high school math teacher and he declared a major in mathematics during his freshman orientation session at the College of Charleston. He eventually double-majored in both mathematics and economics, taking every single math course the college offered. As his mother recalls, "to my knowledge, he still holds the record for the highest number of semester hours ever taken in one semester at 27 semester hours." Al's future dedication to the field and to teaching was apparent during his years as an undergraduate student. As a student, he worked 30-40 hours a week in the mathematics learning laboratory, known as the "MathLab," tutoring college students. Al's friend, Martin O'Leary, remembers the impact that the MathLab had on him as a student:

Al was very instrumental in the establishment of the mathematics learning laboratory...at the College of Charleston. He worked quite a number of hours a week in the lab when I was a student at the College of Charleston and he encouraged me to go to the lab and do my homework in the lab. If I had any problems with the work, there was always a math major or another member of the math department faculty there to provide me with assistance. This lab really helped me as I had a relatively weak math background entering college. This lab also has helped literally thousands of other College of Charleston students who were required to take six hours of math classes in order to earn any degree at the College of Charleston.

Kevin O'Leary, Al's friend and Martin's older brother, also recalls the influence that Al, had on students:

While a student at the College of Charleston, Al was instrumental in the success of a math learning laboratory established with another faculty member; the lab offered free tutoring for students in remedial courses. The math lab was so successful its scope expanded to the entire introductory curriculum and it became staffed by junior and senior level majors in addition to faculty. So, his efforts serviced the community of students needing that sort of help to meet their matriculation requirements, but it also helped raise the profile of the math program within the larger student community. His popularity as a tutor and mentor helped draw more

students to the major. In recognition of these and other contributions Al made while attending the College, he was awarded its highest honor by the faculty at our graduation — the Bishop Smith Award for outstanding service.

Al spent his college years devoted to his coursework and to his work at the MathLab. In recognition of his hard work and achievements, he received numerous awards and graduated summa cum laude in 1979. Al then went on to attend graduate school at the University of North Carolina in Chapel Hill, receiving his Ph.D. in Mathematical Economics in 1987.

While in graduate school, Al worked as an Assistant Professor of Mathematics at his alma mater, the College of Charleston, and remained there until 1990. Martin O’Leary, a family friend and a student at the College of Charleston while Al was working there, recalls how Al decided to add another course to his workload to allow him and another student to learn a subject that was not being offered by the department:

While at the College of Charleston, I chose to major in economics. The economics department, at the time, was a small department with a handful of majors. The department was not offering a course in econometrics due to the limited number of professors in the department. Al decided to add another course to his workload one semester thereby allowing another student and myself to learn the subject. The course ended up becoming very important to me later in graduate school when I had to take two advanced econometrics courses in order to earn my master’s degree at the University of Oklahoma. Al’s course was so rigorous and well-taught that I had seen almost all the topics in the graduate-level courses in his econometrics course. Needless to say, Al did not have to add another course to his workload to help two economics majors who wanted to take a course that was not offered at the time.

In 1996, Al also started an investment consulting firm, Parish Economics LLC, where he served as an economic and financial consultant to various brokers, corporations and individuals. He also developed investment pools for individuals, and pension and retirement plans for corporations. As an economics professor, Al gave approximately 100 lectures or seminars

annually to civic and business groups on investment strategies, economic policy, economic forecasts and business finance. Specifically, Al was regularly called upon to give talks on the outlook of the local economy to a range of professional groups, including local Rotary and Kiwanis Clubs, realtor associations and other business associations. In addition, his research on the economic impact of the South Carolina State Ports Authority was well-recognized.

After working at the College of Charleston, Al took a position at Charleston Southern University to help the School of Business and Economics create its Executive MBA program and remained there until the instant offense. His strong teaching ability was recognized in 1991 when he was awarded Outstanding Faculty Member of the Year. In addition to teaching, Al wrote a weekly column for *The Post and Courier* and served as the Director of the Center for Economic Forecasting and Chief Economist for the Charleston Metro Chamber of Commerce for 18 years. In this capacity, Al was responsible for economic forecasting in three regions, as well as publishing newsletters regarding economic forecasts and holding an annual forecast conference in each region. A close friend, Stephen A. Russell, believes Al was well-suited for this role.

He was respected for his knowledge, perspective and light-hearted look at the complex nature of his specialty: economic forecasting. I always heard nothing but compliments from those in attendance for how he explained economic concepts in such understandable ways.

Al was particularly well-regarded for his forecasting ability, which was based on an econometric model that he himself created. As Charles H. Van Rysselberge, President and CEO of the Charleston Metro Chamber of Commerce, explains:

A review of the past five years of his economic forecasts resulted in the discovery that his predictions were on average 78% accurate. On 18 indicators, his forecast was within 10% plus or minus of actual. After sharing this information with several economists in other parts of the country we were told that this kind of record would be considered very good and above average. We take that

recognition as a pretty strong indicator of the quality of his work and knowledge as an economist to be very effective and admirable.

As a result of his work for the Chamber, Al was elected Volunteer of the Year for the Charleston Chamber of Commerce in 2006.

Al's long-time friend, Dr. Herbert H.J. Riedel, perhaps best summarizes his professional career in his letter to the Court:

In all business and other interactions of his which I have knowledge of, he has been honest, generous, kind and caring. When we discussed our respective students, I could tell that he was concerned about their success....I saw him as dedicated to his job, his profession, his family, his church and his friends. He worked tirelessly, giving many hours to speaking engagements and public service.

**D) Devotion to Family, Friends and Community**

Al Parish is best characterized for his deep commitment and loyalty to his friends and family. He has built strong relationships throughout his life and, despite his rigorous work schedule, has worked hard over the years to maintain these relationships.

As a young man, Al exhibited a strong sense of responsibility towards not only his immediate family, but also towards his grandparents and other relatives. When he was younger, he helped his mother take care of his grandparents, who lived about a half a mile away. As Al's mother recalls:

When [my parents] became elderly and needed help, Al pitched in and was very helpful to them and to me. He went with me to take them to doctors, buy groceries and the like. He ran errands for me such as going to get the sitter for my parents until we returned from school and work.

Al also developed a close relationship with his great-aunt, Connie, who was a widow and even lived with her for about a year and a half when he was in college. In doing so, "he provided her with companionship and the security of knowing that things would be taken care of."

When Al was 26 years old, his father passed away due to an aneurism in his heart. As the oldest child, Al stepped in and took on the responsibility of taking care of his mother and siblings. As his sister Ruthie recalls, “He was always there for my mom, brother and myself. Al was always willing to help out with anything and took care of anything we needed.”

Instances of Al’s generosity and care for others are repeatedly noted in letters to the Court written by his friends, family and church members. As the rector of Christ-St. Paul’s Episcopal Parish, where Al attended growing up, writes:

I have found him to be an extremely intelligent, loving and gracious man. He has shown tremendous love to his mother, brother and sister, in many ways throughout these years. He has also demonstrated tremendous generosity to me and the parish. On several occasions he graciously offered his condo on Edisto for visiting guest speakers, for a weekend stay offered for our mission trip fundraising efforts in the parish, and for me and my family to have a time of rest and refreshment. These are but a few of the tangible ways I saw him demonstrate a generous spirit.

Al’s aunt, Hilda Cannon, also explains the kindness that he has shown to her over the years, particularly during times when she has been sick:

In my contact with him, he has demonstrated thoughtfulness with his efforts to help me in any way I need help during my illnesses. He has repeatedly offered help with doctor trips and running errands. His calls to me have been encouraging and uplifting to me during sometimes difficult times. He has repaired my driveway, set up my TV, and brought fresh fruit and flowers to me. He and his family frequently stopped to visit on their way home from church.

A close friend of Al’s, Martin O’Leary, recalls the generosity that Al exhibited upon hearing that he had been burglarized:

In 1992, my apartment was burglarized shortly after moving to Houston, Texas. I had just started my first job working for Tenneco Corporation. I did not have very much money at the time. I told Al what happened and he immediately shipped his old electronics gear that he had replaced. He shipped everything to me,

paying the freight and again not wanting payment for anything. He even apologized that all he could give me was a 12" color TV.

As evidenced by the letters written on his behalf, Al has had a profound impact on others, ranging from giving professional advice regarding academic careers, to teaching Sunday School at his church, to small acts of kindness to people in a time of need. Words used to describe Al include a "faithful, loving husband and a caring devoted father to his children," "honorable, gentle and kind," "a considerate, generous, thoughtful and dedicated friend and person," and "highly intelligent".

Over the last several years, Al's various commitments became too much to handle and he became extremely over-extended. He believes that this was the result of his intense loyalty and an inability to say "no" to people. On March 29, 2007, Al collapsed following an economic forecast presentation to the Charleston Chamber of Commerce. Al had a heart attack 10 years ago for, as his mother explains, "much the same reason — doing too many things for too many people." She continues:

During the years before his collapse, Al was working at least 90 hours per week. He was teaching and advising at Charleston Southern, running the Center for Economic Forecasting, giving an average of two or three speeches per week, trying to manage Parish Economics, helping with Battery Wealth Management, and helping to write economic impact studies. He is also a husband and father to four young children. All of this work created too much stress on Al and he finally shut down.

#### **IV.**

#### **FACTORS TO BE CONSIDERED IN IMPOSING SENTENCE**

#### **A) Mr. Parish's Advisory Guideline Range is Disparate to Sentences Imposed on Similarly-Situated Offenders and Thus Violates 18 U.S.C 3553 (a)(6)**

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court determined that district courts must consider all of the sentencing factors under 18 U.S.C. §3553(a)(1)-(7)

without giving mandatory weight to the sentencing guidelines under 18 U.S.C. §3553(a)(4). As mandated by Congress in 18 U.S.C. §3553(a), the fundamental principle of sentencing is that a court “*shall impose a sentence sufficient, but not greater than necessary*” to meet specified sentencing goals. (Emphasis added). Section 3553(a)(2) states that such purposes of punishment are:

- A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- B) to afford adequate deterrence to criminal conduct;
- C) to protect the public from further crimes of the defendant; and
- D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In determining the minimally sufficient sentence, 3553(a) further directs sentencing courts to consider the following factors:

- 1) The nature and circumstances of the offense and the history and characteristics of the defendant [§3553(a)(1)];
- 2) The kinds of sentences available [§3553(a)(3)];
- 3) The advisory guideline range [§3553(a)(4)];
- 4) Any pertinent policy statement issued by the Sentencing Commission [§3553(a)(5)];
- 5) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct [§3553(a)(6)]; and
- 6) The need to provide restitution to any victims of the offense [§3553(a)(7)].

In every case, a sentencing court must now consider *all* of the §3553(a) factors, not just the advisory guidelines, in determining a sentence that is sufficient but not greater than necessary

to meet the goals of sentencing. In fact, no special weight is to be given to the advisory guidelines as opposed to the other factors mentioned in 18 U.S.C. §3553(a). *See Rita v. U.S.*, 127 S.Ct. 2456 (2007)(a sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply). *See also, U.S. v. Biheiri*, 356 F.Supp.2d 589, 594 (E.D.Va. 2005)(no individual factor is singled out as having greater weight; instead, the richness of factual diversity in cases calls on sentencing judges to consider all of the factors and to accord each factor the weight it deserves under the circumstances).

In fashioning a post-*Booker* sentence, even if a district court denies the traditional downward departure based on a certain mitigating factor, it may nevertheless consider the same factor and reach the same sentence under the 3553(a) analysis. *See U.S. v. Baker*, 445 F.3d 987, 991 (7th Cir. 2006)(Post-*Booker*, a district court has significantly more freedom than before *Booker* to fashion an appropriate sentence). In addition, those factors that were considered improper under the mandatory Guidelines regime are not necessarily improper under the advisory Guidelines system. *See U.S. v. White*, 506 F.3d 635 (8th Cir. 2007)(rejecting argument that because the district court erred when it based the variance in part on some factors ordinarily considered irrelevant in calculating the advisory guideline range, namely, White’s age and medical condition. “Under the post-*Booker* advisory guideline regime, district courts are not only permitted, but required, to consider ‘the history and characteristics of the defendant.’ This mandate includes consideration of a defendant’s age and medical condition,); *U.S. v. Jones*, 460 F.3d 191 (2d Cir. 2006)(With the entire Guidelines scheme rendered advisory by the Supreme Court’s decision in *Booker*, the Guidelines limitations on the use of factors to permit departures are no more binding on sentencing judges than the calculated ranges themselves”). In sum, as explained by the Court in *U.S. v. Biheiri*, fashioning a just sentence cannot be reduced to a mere

arithmetical exercise [and that] reliance solely on numbers, quantities, offense levels, criminal history categories, and matrices produces an illusory precision that obscures the fact that sentencing, in the end, must involve the exercise of *judgment*, i.e., a judge's discerning opinion that results from identifying and weighing fairly all of the factors relevant to achieving the statutory sentencing goals. 356 F.Supp.2d 589, 594 (E.D.Va. 2005). (Emphasis in the original.)

Title 18 U.S.C. §3553(a)(6) directs that the “need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct” be considered when imposing sentence. In fact, this mandate, to avoid unwarranted sentence disparities, was the primary impetus for the creation of the Federal Sentencing Guidelines.

In 1984, Congress passed the Sentencing Reform Act (SRA) in an attempt to eliminate the disparities for similarly situated offenders that had existed for the prior 50 years under the indeterminate sentencing model. The SRA created and authorized the United States Sentencing Commission to establish sentencing policies and practices that:

[P]rovide certainty and fairness in meeting the purposes of sentencing, *avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct* while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.

Title 28 U.S.C. §991(b)(1)(B) (Emphasis added).

The United States Sentencing Commission continues to underscore the need to avoid unwarranted sentencing disparity. Specifically, the Commission stated in its 2007 Annual Report:

The *guidelines are intended to promote fairness* through the establishment of sanctions proportionate to the severity of the

*crime and the avoidance of unwarranted disparity by setting similar penalties for similarly situated offenders.*

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Disparity in sentencing has long been a concern for Congress, the criminal justice community, and the public.

U.S. Sentencing Comm'n, 2007 Annual Report, Chapter 1 p. 1. (Emphasis added.)

We have had extensive research conducted on sentences imposed for violation of the very crimes to which Al Parish pleaded guilty. To conduct this research, we contacted Herbert J. Hoelter, the Co-Founder and Chief Executive Officer<sup>4</sup> of the National Center on Institutions and Alternatives (NCIA), a nonprofit organization which has worked in the sentencing field for over 31 years, and has been recognized for its sentencing expertise in Courts across the country. Their analysis is detailed herein.<sup>5</sup>

The United States Sentencing Commission (USSC) maintains a comprehensive, computerized data collection system of federal sentencing information Pursuant to 28 U.S.C. §994(w), each chief judge of a district is required to ensure that within 30 days after entry of judgment in a criminal case, the sentencing court submits a report of sentence to the Commission that includes: (1) the judgment and commitment order; (2) the statement of reasons (including the reasons for any departures); (3) any plea agreement; (4) the indictment or other charging document; (5) the presentence report; and (6) any other information the Commission needs.

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<sup>4</sup>We anticipate that Mr. Hoelter will testify at Mr. Parish's Sentencing Hearing and Mr. Hoelter's *Curriculum Vitae* is appended to this memorandum at Appendix 2.

<sup>5</sup>NCIA has operated since 1977 as a nonprofit organization. Its Criminal Justice Services (CJS) provide services to defense attorneys, clients and courts throughout the country. CJS provides individualized sentencing evaluations and recommendations for persons who are facing incarceration for those seeking relief. NCIA has provided services to over 15,000 clients in all 50 states. CJS services include sentencing reports, sentencing guideline assistance, capital case assistance, parole plans, research, and institutional designation/transfer. A more complete organizational profile is appended to this memorandum at Appendix 3.

Data from these documents are extracted and coded for input into the USSC databases. The Commission's computerized datasets, without individual identifiers, are available via tape and the Internet through the Inter-University Consortium for Political and Social Research at the University of Michigan (ICPSR) and the Federal Justice Statistics Resource Center.

This collection contains information on federal criminal cases sentenced under the Sentencing Guidelines and Policy Statements of the Sentencing Reform Act of 1984. The data files included in this study contains all cases received by the USSC that were sentenced between October 1, 1998, and September 30, 2006. United States Federal Courts handled over 525,000 criminal cases between the fiscal years 1999 and 2006. The USSC estimates that 99% of all cases are included in this dataset.<sup>6</sup>

#### **ANALYSIS**

- STEP 1:** NCIA downloaded the data sets from fiscal years 1999-2006 from [www.icpsr.umich.edu/](http://www.icpsr.umich.edu/).
- STEP 2:** Data files were extracted, and imported into SPSS utilizing the SPSS setup files provided by the ICPSR Web site.
- STEP 3:** Sorted and selected cases where the defendant was scored according to the Fraud Guideline (U.S.S.G. §2F1.1/2B1.1). 62,006 cases.
- STEP 4:** Deleted those cases where the defendant was not Criminal History Category I (20,121 deleted). 41,885 cases remain.
- STEP 5:** Deleted those cases with missing mode of adjudication information (56 deleted). 41,829 cases remain.
- STEP 6:** Deleted those cases with missing or incomplete sentencing information (365 cases deleted). 41,464 cases remain.
- STEP 7:** Deleted those cases with missing or incomplete Guideline Manual and/or Guideline calculation information (105 deleted). 41,359 cases remain.

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<sup>6</sup>The raw data for this analysis is provided via disk.

**STEP 8:** Sorted the dataset by loss amount and deleted those cases that contained either missing or incomplete loss information (372 cases deleted). 40,987 cases remain.

**STEP 9:** Deleted those cases where the defendant did not enter into a plea agreement (1,872 deleted). 39,115 cases remain.

**STEP 10:** Sorted these 39,115 cases by loss amount and set up loss categories based on the November 1, 2007 Manual. Talled the total number of cases sentenced to a term of imprisonment versus those receiving a probationary or fine only sentence to determine the percentage of each category (“Prison” or “Fine/Probation Only”). For those who received a term of imprisonment, the average sentence length was determined (see chart).

<b>USSG 2B1.1/2F1.1 Sentences Imposed - National Analysis FY 1999 - FY 2006</b>				
<b>Loss Amount</b>	<b>Total Cases</b>	<b>Probation/ Fine Only</b>	<b>Prison</b>	<b>Average Prison Length</b>
<b>0 - \$1 Million</b>	<b>n=35,339</b>	<b>18,518 (52.4%)</b>	<b>16,821 (47.6%)</b>	<b>11.7 MO</b>
<b>&gt; \$1 Million - \$2.5 Million</b>	<b>n=1,848</b>	<b>304 (16.5%)</b>	<b>1,544 (83.5%)</b>	<b>29.8 MO</b>
<b>&gt; \$2.5 Million - \$7 Million</b>	<b>n=1,003</b>	<b>156 (15.6%)</b>	<b>847 (84.4%)</b>	<b>38.9 MO</b>
<b>&gt; \$7 Million - \$20 Million</b>	<b>n=554</b>	<b>82 (14.8%)</b>	<b>472 (85.2%)</b>	<b>43.3 MO</b>
<b>&gt; \$20 Million - \$50 Million</b>	<b>n=169</b>	<b>24 (14.2%)</b>	<b>145 (85.8%)</b>	<b>52.5 MO</b>
<b>Over \$50 Million</b>	<b>n=202</b>	<b>42 (20.8%)</b>	<b>160 (79.2%)</b>	<b>53.5 MO</b>
<b>All Cases</b>	<b>n=39,115</b>	<b>19,126 (48.9%)</b>	<b>19,989 (51.1%)</b>	<b>15.6 MO</b>

**STEP 11:** Sorted these 39,115 cases by reason for departure and excluded those cases where the defendant received a downward departure pursuant to USSG 5K1.1 (6,095 defendants received a 5K1.1). The remaining 33,020 cases were sorted by loss amount and loss categories were set up based on the November 1, 2007 Manual. Tallied the total number of cases sentenced to a term of imprisonment versus those receiving a probationary or fine only sentence to determine the percentage of each category (“Prison” or “Fine/Probation Only”). For those who received a term of imprisonment, the average sentence length was determined (see chart).

<b>USSG 2B1.1/2F1.1</b> <b>Sentences Imposed - National Analysis</b> <b>Excluding 5K1.1 Defendants</b> <b>FY 1999 - FY 2006</b>				
<b>Loss Amount</b>	<b>Total Cases</b>	<b>Probation/ Fine Only</b>	<b>Prison</b>	<b>Average Prison Length</b>
<b>0 - \$1 Million</b>	<b>n=30,626</b>	<b>15,624 (51.0%)</b>	<b>15,002 (49.0%)</b>	<b>12.0 MO</b>
<b>&gt; \$1 Million - \$2.5 Million</b>	<b>n=1,265</b>	<b>106 (8.4%)</b>	<b>1,159 (91.6%)</b>	<b>34.3 MO</b>
<b>&gt; \$2.5 Million - \$7 Million</b>	<b>n=648</b>	<b>48 (7.4%)</b>	<b>600 (92.6%)</b>	<b>45.4 MO</b>
<b>&gt; \$7 Million - \$20 Million</b>	<b>n=317</b>	<b>17 (5.4%)</b>	<b>300 (94.6%)</b>	<b>54.2 MO</b>
<b>&gt; \$20 Million - \$50 Million</b>	<b>n=86</b>	<b>6 (7.0%)</b>	<b>80 (93.0%)</b>	<b>68.2 MO</b>
<b>Over \$50 Million</b>	<b>n=78</b>	<b>2 (2.6%)</b>	<b>76 (97.4%)</b>	<b>74.4 MO</b>
<b>All Cases</b>	<b>n=33,020</b>	<b>15,803 (47.9%)</b>	<b>17,217 (52.1%)</b>	<b>15.9 MO</b>

It is important to note from the above analysis that while sentences for fraud cases are evenly distributed between prison and probation (52.1% versus 47.9%, respectively) with an overall average prison sentence length of 15.9 months, the loss amount significantly impacts the type of sentence a defendant receives. The higher the loss amount, the more likely a sentence of prison will be imposed. However, even accepting that the loss attributable to Mr. Parish exceeds \$50

million, it is significant that even in this loss category the average prison sentence for the 76 individuals sentenced to a period of imprisonment was 74.4 months. Clearly, a guideline range of 292 to 365 months is disparate to other offenders similarly-situated to Mr. Parish.

**B) Mr. Parish's Advisory Guidelines Calculation Uses Multiple Overlapping Enhancements Thereby Creating a Disproportionate Impact on his Advisory Guideline Range**

As stated, the amount of loss triggers a high offense level. Similarly, numerous enhancements contained in Al Parish's advisory guideline calculation overlap and thus a sentence substantially below this advisory guideline range is warranted.

The Probation Office is recommending numerous enhancements which are based upon identical or overlapping conduct. For example, the (i) loss amount, (ii) number of victims, and (iii) violation of securities law while serving as an investment advisor, substantially overlap in their factual bases. When a defendant faces a sentence at the high-end of the guidelines sentencing table, sentencing courts have downwardly departed from the advisory guideline range upon recognition of the fact that a number of the applicable sentence enhancements are based upon overlapping conduct.

In *United States v. Lauersen*, the Second Circuit stated that “we think that the cumulation of such substantially overlapping enhancements, when imposed upon a defendant whose adjusted offense level translates to a high sentencing range, presents a circumstance ‘to a degree’ not adequately considered by the Commission, see 18 U.S.C. §3553(b)(1), and therefore permits a sentencing judge to make a downward departure.” 348 F.3d 329, 344 (2d Cir. 2003), *aff'd on reh'g*, 362 F.3d 160 (2004), *vacated for reconsideration*, 543 U.S. 1097, 125 S. Ct. 1109 (2005).<sup>7</sup> The appellate court explained that enhancements based on overlapping conduct can

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<sup>7</sup>We recognize that the *Lauersen* holding is not the law of the 4<sup>th</sup> Circuit. See *United States v. Allen*, 491 F.3d 178 (4<sup>th</sup> Cir. 2007). However, we believe it should serve as persuasive authority.

have a disproportionate impact upon a sentence at the high-end of the sentencing table because a change in offense level at the high-end affects the sentence much more than the same change in offense level at the low-end of the table.<sup>8</sup>

The Second Circuit reapplied this doctrine in *United States v. Jackson*, 346 F.3d 22 (2d Cir. 2003). Jackson was convicted of bank fraud, credit card fraud, mail fraud, wire fraud, and conspiracy. The sentencing judge imposed a 10-point enhancement for the loss amount, a two point enhancement because the offense involved more than minimal planning, a four point enhancement because Jackson was an organizer or leader of an extensive criminal activity, and a two point enhancement for use of sophisticated means. Although the appellate court affirmed these enhancements, it noted that “they are little more than different ways of characterizing closely related aspects of Jackson’s scheme.” *Id.* at 26. The court emphasized that “any one enhancement increases the sentencing range by a far greater amount when the enhancement is combined with other enhancements than would occur if only one enhancement is imposed.” *Id.* Because the sentencing court did not have the benefit of the Second Circuit’s decision in *Lauersen*, the appellate court remanded for reconsideration.

The Second Circuit reconsidered and re-affirmed its *Lauersen* and *Jackson* holdings, stating that “we continue to believe that when the addition of substantially overlapping enhancements results in a significant increase in the sentencing range minimum (as it does at the

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<sup>8</sup>Defendant Lauersen was an obstetrician and gynecologist convicted of mail fraud, health care fraud and making false statements relating to health care matters. The district court determined Lauersen’s offense level to be 29, which included a thirteen level enhancement for the loss amount, and a two level enhancement for abuse of a position of trust. On appeal, the appellate court ruled that the offense level should have been increased four points to 33 because Lauersen’s conduct also affected a financial institution and he received more than \$1 million in proceeds. The appeals court noted, however, that a downward departure may be warranted on remand because *Lauersen* faced a sentence at the high-end of the sentencing table and these enhancements were based on overlapping conduct. *See Lauersen*, 348 F.3d at 344.

higher end of the sentencing table), a departure may be considered.” *United States v. Lauersen*, 362 F.3d 160, 164 (2d Cir. 2004). With respect to its ruling in *Jackson*, the court noted that:

the cumulative effects of the overlapping enhancements for the amount of the loss, more than minimal planning, sophisticated means, and leadership of an extensive criminal activity, combined with the significant impact of these enhancements at the higher end of the sentencing table permitted consideration of a departure by the District Court. As we pointed out, ‘Most fraud schemes that obtain more than one half million dollars involve careful planning, some sophisticated techniques, and are extensive.’

*Lauersen*, 362 F.3d at 162-63 (quoting *Jackson*, 346 F.3d at 25-26); *see also United States v. Savin*, 349 F.3d 27 (2d. Cir. 2003) (imposing downward departure on ground that several enhancements were based on overlapping conduct).

The United States Sentencing Commission has also recognized that the overlap of enhancements can over-punish defendants and described this phenomenon as “factor creep” in its report *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*. <http://www.ussc.gov/15year/15year.htm> p. 137 (2004). Although the Commission neither sanctioned a downward departure to address the problem nor prescribed a general systemic remedy, it did observe that “as more and more adjustments are added to the sentencing rules, it is increasingly difficult to ensure that the interactions among them, and their cumulative effect, properly track offense seriousness.” *Id.*

Numerous enhancements recommended by the Probation Office for the calculation of Al Parish’s advisory Sentencing Guideline range are based on overlapping conduct. The probation officer has added a six-level increase for more than 250 victims, and a four-level enhancement for violating securities law while serving as an investment advisor. These enhancements, totaling an additional 10 levels, are clearly overlapping and significantly increase the sentencing range.

*See U.S. v. Adelson*, 441 F.Supp.2d 506, 510 (SDNY 2006) (“the [Sentencing] Commission has never explained the rationale underlying *any* of its identified specific offense characteristics, why it has elected to identify certain characteristics and not others, or the weights it has chosen to assign to each identified characteristic. Here, their combined effect — an added 20 points under the Government’s approach — ill-fits the situation of someone like Adelson. It represents, instead, the kind of ‘piling-on’ of points for which the guidelines have frequently been criticized.”). Therefore, because numerous enhancements in Mr. Parish’s advisory guideline calculation overlap, we believe a significant downward departure is warranted based upon the cases cited above.

**C) Mr. Parish’s Extensive Cooperation Deserves Significant Consideration**

Section 5K1.1 of the Federal Sentencing Guidelines permits the Court to depart downward, upon motion of the government based on a defendant’s substantial assistance in the investigation or prosecution of others. According to §5K1.1(a), the extent of the departure should be determined based on numerous factors including:

- ◆ The significance or usefulness of the cooperation;
- ◆ The defendant’s truthfulness and reliability;
- ◆ The extent of the cooperation;
- ◆ Any danger or risk of injury to the defendant or his family as a result of the cooperation; and
- ◆ The timeliness of the defendant’s assistance.

Perhaps the greatest difficulty confronting any defendant contemplating the entrance of a cooperation agreement conditioned on future performance is whether he can offer information sufficiently useful and “substantial” so as to warrant the filing of a §5K1.1 departure motion on his behalf prior to sentencing. Although efforts comprising “substantial assistance” have never been formally codified, a Sentencing Commission-sponsored mail survey of the nation’s 94

United States Attorney's Offices revealed agreement on conduct that is normally considered "substantial assistance."<sup>9</sup>

According to the Sentencing Commission's report:

...as reported by the U.S. attorneys, the policies as to who should be awarded §5K1.1 motions were generally consistent. There was almost a total consensus that offenders who testify (100%), participate in the investigation of another offender (98.9%), or provide information for the prosecution of others (98.9%) should receive a substantial assistance departure. Further, providing information on the criminal activity of others was supported by nearly as many (92%) of the U.S. attorneys responding to the mail survey.<sup>10</sup>

We respectfully submit that Al Parish's cooperation with the Receiver and the SEC merits significant consideration when imposing sentence. As discussed above, the elements listed in §5K1.1(a), which govern the extent of the sentencing reduction, are clearly met in this case. Mr. Parish's cooperation has been significant, not simply because he has devoted hundreds of hours to debriefing sessions and reviewing documents with authorities, but because the information he has provided has proven critical in the Receiver's ability to obtain significant additional funds to make restitution to victims. Mr. Parish began offering substantial assistance to the government soon after his release from the hospital and has been honest and forthright in all of his meetings with the Receiver and the SEC.

In his declaration to the Court, Scott S. Askue, Managing Directors of Hays Financial Consulting, LLC, which assisted the Receiver in this case, describes Al Parish's efforts:

Throughout this process, I have been aware that Defendant Parish has been reviewing the schedules and other information provided to his counsel and that he (and his counsel) have been performing their own analysis of our work and the underlying information.

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<sup>9</sup> L.D. Maxfield and J.H. Kramer, *Substantial Assistance: An Empirical Yardstick Gauging Equity in Current Federal Policy and Practice*, USSC (Jan. 1998), available at <http://www.bop.gov>.

<sup>10</sup> Id. at 9.

On or about March 18, 2008, I, along with the Receiver and the Receiver's counsel, met with defendant Parish and his counsel to discuss our analysis and issues that might affect our ultimate conclusions about various issues. This meeting was the beginning of a process that resulted in Defendant Parish working with me to resolve a number of the financial issues related to funds tracing and claims review. Prior to and since the meeting, Defendant Parish provided us with schedules and other information regarding disbursement and other investor claims. In addition, Defendant Parish, along with others working on his behalf, have worked with me [on] our ongoing funds tracing and account activities. It is evident to me and other members of the Receiver Team that defendant Parish has devoted substantial time and effort to these efforts and his assistance has been useful to the Receiver Team in resolving a number of financial issues, especially those expenditures that should be allocated as "Payments For the Benefit of Investors."

As a direct result of Al Parish's cooperation, over \$13 million in false or incorrect claims were reallocated to other investors, thereby substantially assisting in determining restitution. While we understand that a defendant is not eligible for a downward departure pursuant to U.S.S.G. 5K1.1 unless the government motions the Court for such a departure, we contend that the court should take Mr. Parish's cooperative efforts into consideration when imposing sentence.<sup>11</sup>

Based upon these efforts, we ask the Court to give significant consideration to his extraordinary cooperative efforts when imposing sentence on Mr. Parish.

**D) Al Parish's Medical Condition Merits the Court's Consideration in Imposing Sentence**

In imposing sentence in this case, we ask the Court to take into account Al Parish's serious and fragile medical condition, and the prognosis that his life span is severely shortened as

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<sup>11</sup> In a Second Circuit case, the Court agreed with this premise: "We agree that in formulating a reasonable sentence a sentencing judge just consider the 'history and characteristics of the defendant' within the meaning of 18 U.S.C. § 3553(a), and should take under advisement any related arguments, including the contention that a defendant made efforts to cooperate, even if those efforts did not yield a Government motion for a downward departure pursuant to U.S.S.G. § 5K1.1 ('non-5K cooperation'). *United States v. Fernandez*, 443 F.3d 19 (2d Cir.), *cert. denied*, --- U.S. ---, 127 S.Ct. 192 (2006).

a result. To assist the Court in its review, we are providing a report prepared by Sarah Lustig, a registered Nurse and a Legal Nurse Consultant. To prepare this report, Ms. Lustig interviewed Mr. Parish concerning his family history, reviewed Mr. Parish's medical reports for the past ten years, spoke with his physicians, and consulted with American Settlement Corporation to establish a rated age (life expectancy) of Mr. Parish. Her report is included as Appendix 4 for the Court's review.

Mr. Parish had his first serious health issue in 1997, at the age of 40. At that time he was admitted to the hospital for chest pains, for which they performed a cardiac catheterization and inserted a stent into one of his main arteries leading to the heart. Since that time, he has been admitted to the hospital numerous times with heart issues, the most recent being June 17, 2008. He has been diagnosed with paroxysmal atrial fibrillation, diabetes mellitus type 2, dyslipidemia or hyperlipidemia, hypertension, coronary atherosclerosis disease, obesity, and metabolic syndrome. . As noted in Ms. Lustig's report:

Atrial fibrillation (AF), a common and serious cardiac rhythm disturbance, is responsible for substantial morbidity and mortality, chiefly from stroke. In addition to often disabling symptoms and impaired quality of life, AF can precipitate heart failure and trigger potentially fatal ventricular dysrhythmias. Of standard cardiovascular risk factors, hypertension, diabetes, and obesity are significant independent predictors of AF. Myocardial infarction (MI) substantially increases the likelihood of AF. The most common complaint of atrial fibrillation (AF) is heart palpitations. Other symptoms of AF can include fatigue, lightheadedness, dizziness, altered mental status, and dyspnea on exertion (shortness of breath). It is frequently first detected by EKG in the course of a myocardial infarction (MI) (Benjamin & Kannel, 2008). Warfarin anticoagulant therapy is highly effective for prevention of stroke in patients with AF. It can reduce the risk of stroke by 62%, particularly in patients with risk factors such as cardiovascular disease and diabetes. If AF persists, catheter ablation or pacemaker implantation may be necessary for cardioversion (Cummings, Tchou, et al, 2008).

Of the major cardiovascular risk factors, hypertension and diabetes were significant predictors of AF. Obesity is associated with long-term risk for AF, mediated by the enlargement of the left atrium of the heart, obesity-induced metabolic syndrome, and insulin resistance. The mortality rate of patients who have AF is approximately double that of patients in normal sinus rhythm and is linked to the severity of underlying heart disease, obesity, and type 2 diabetes mellitus. AF accounts for approximately 45% of all embolic strokes and is associated with a four-five fold greater risk than those not affected by AF (Benjamin & Kannel, 2008).

Of significance is Mr. Parish's family history of heart disease. His father, who also had his first heart procedure at age 40, experienced two heart attacks, and died at the age of 56 due to cerebral infarction related to active sclerotic heart disease. His paternal grandfather, George, died at the age of 58 and his paternal great-grandfather, Clifford, died at age 55; both of these deaths were the result of coronary disease.

Mr. Parish's medical history and background were also sent to American Settlement Corporation, who forwarded it to eight major insurance companies for rating. The rated age estimates ranged for 57 to 66, with the average being 63.25 years.

Based upon this history, Al Parish undoubtedly has a shortened life expectancy. Al Parish, who will be 51 years old in August, likely has less than 18 years to live, and any extended sentence of incarceration thereby becomes a life sentence for him.

## **V. CONCLUSION**

As stated in the beginning of this memorandum, none of this information is presented to excuse or diminish the crimes committed by Al Parish. He knows he must be punished, and he knows he will be incarcerated. We ask the Court to consider this information and to impose a sentence on him which will give him some glimmer of hope that he will be able to some day return to his family and assist in raising his young children. We believe a sentence within the

statistical range for defendants with similar characteristics would meet the statutory goals of sentencing, and would be a fair and just outcome in this case.

Respectfully submitted,

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June 19, 2008.