IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**CRIMINAL NO. 08–592-01**
JOHN P. KAROLY JR.	**:**	

GOVERNMENT'S SENTENCING MEMORANDUM

I. INTRODUCTION

In committing and defending against his many crimes, John Karoly Jr. did much more than dishonor and disgrace himself; John Karoly, Jr. dishonored and disgraced the entire legal community.

Defendant John Karoly, Jr., an attorney licensed to practice law in the Commonwealth of Pennsylvania since 1975, and who maintained an active law practice for 35 years, stands convicted of defrauding a public charity and his own church, setting up a fictitious charity to use only as his personal tax shelter, and failing to report more than $5 million in taxable income. Further, John Karoly, Jr. attempted to defend his frauds and deceive the federal grand jury investigating his crimes – and later, during his sworn trial testimony before this Court, who found his testimony "not to be credible" – by providing a knowingly fabricated, forged, and backdated "Agreement for the Sale of Real Estate," a blatant and inexcusable obstruction of justice.

In addition, the grand jury indicted John Karoly, Jr. for orchestrating a scheme, beginning in the hours immediately following the tragic deaths of his younger brother, Peter Karoly, and sister-in-law, Lauren Angstadt, by which John Karoly, Jr. attempted to steal Peter's

and Lauren's multimillion dollar estate by creating fake, *ex post facto* wills in Peter's and Lauren's respective names; shamelessly, the victims from whom John Karoly, Jr. sought to steal were his very own sisters, who, unlike John Karoly, Jr., had been named beneficiaries in their brother Peter's and sister-in-law Lauren's authentic Last Wills and Testaments. As will be explained below, this evidence is appropriate for the Court's consideration at sentencing (1) under the terms of the parties Plea Agreement, notwithstanding that the corresponding charges will be dismissed pursuant to that Plea Agreement if defendant Karoly fully complies with its terms and conditions; (2) to show the defendant's history and characteristics under 18 U.S.C. § 3553(a); and (3) as "information to be used in imposing sentence" under 18 U.S.C. § 3661 and U.S.S.G. § 1B1.4.

The totality of John Karoly, Jr.'s shameful misconduct reflects not only contempt for the most basic civic duties applicable to the citizenry at large, but worse, a total and willful denigration of the long-established standards of ethical conduct that govern the practice of law. And to be clear, this case does not involve an attorney who happened to commit crimes unrelated to his licensure; John Karoly stands before Your Honor having used his law license to steal and cheat.

Lawyers, here in Pennsylvania as in every other state, are obligated to act at all times honorably, lawfully, and in accordance with a code of professional and ethical conduct. The ethical standards that govern the practice of law are largely self-enforced; lawyers, for the most part, are entrusted to police themselves. This deference accords not only to the presumed integrity of the individual lawyer, but the unique and critical role that an independent Bar has in our society. As Chief Justice Warren E. Burger eloquently observed:

The lawyer's obligations as an officer of the court permit the court to call on the

> lawyer to perform duties which no court could order citizens generally to do, including the obligation to observe codes of ethical conduct not binding on the public generally…
>
> The role of a lawyer as an officer of the court predates the Constitution; it was carried over from the English system and became firmly embedded in our tradition. It included the obligation of first duty to client. But that duty never was and is not today an absolute or unqualified duty. It is a first loyalty to serve the client's interest but always within - never outside - the law, thus placing a heavy personal and individual responsibility on the lawyer. That this is often unenforceable, that departures from it remain undetected, and that judges and bar associations have been singularly tolerant of misdeeds of their brethren, renders it no less important to a profession that is increasingly crucial to our way of life. The very independence of the lawyer from the government on the one hand and client on the other is what makes law a profession, something apart from trades and vocations in which obligations of duty and conscience play a lesser part. It is as crucial to our system of justice as the independence of judges themselves.
>
> The history of the legal profession is filled with accounts of lawyers who risked careers by asserting their independent status in opposition to popular and governmental attitudes, as John Adams did in Boston to defend the soldiers accused in what we know in our folklore as the 'Boston Massacre.'…The crucial factor in all these cases is that the advocates performed their dual role - officer of the court and advocate for a client - strictly within and never in derogation of high ethical standards.

Application of Griffiths, 413 U.S. 717, 731-32 (1973) (Burger, C.J., dissenting).

The damage John Karoly, Jr. has caused "to the concept of a lawyer as an officer of the court" is, at least in this District, manifest. Indeed, this defendant's crimes, committed as they were to benefit only the defendant, are as egregious as the outer bounds of what one might imagine even the most pernicious attorney attempting on behalf of a client. John Karoly, Jr. used his legal training to strong-arm and defraud his own church and pastor, to steal from his own sisters, to manipulate a charitable organization, to shun his obligation to pay taxes, to create fabricated legal documents, and to obstruct justice. The record shows that John Karoly Jr. abides no ethical standard; and his willingness to defraud those who might help feed his insatiable appetite for money and material things, knows no boundaries.

The United States respectfully submits that John Karoly, Jr.'s criminal acts and omissions should be judged against the heightened ethical standard that every lawyer is obligated to obey. In punishing John Karoly, Jr. for his crimes, the Court is punishing a member of the Bar who used his legal training and expertise gained over decades of legal practice, to steal, cheat, obstruct, and defraud; a lawyer who played by his own rules and on his own terms, and committed each of his many crimes in the name of greed, in consideration only of an unchecked and ruthless ambition to accumulate as much money as he possibly could; a lawyer who time and time again over the course of many years proved true the old adage noted by Theodore Roosevelt, who famously and astutely observed that "[t]o educate a man in mind, and not in morals, is to educate a menace to society." John Karoly, Jr. deserves a lengthy sentence of imprisonment, not only as a just punishment for his shameful and reprehensible conduct, but to deter those who would follow in his footsteps and cause further damage to the reservoir of respectability and trust built by the honorable service of generations of honorable and ethical attorneys.

For these and reasons set forth below, the United States respectfully requests that John Karoly, Jr. be sentenced at the highest end of the advisory Guidelines range.

II. SUMMARY OF DEFENDANT KAROLY'S CRIMINAL CONDUCT

By superseding indictment returned on March 12, 2009, the grand jury charged defendant Karoly with the following felony offenses: Counts 1-3, wilfully filing false federal income tax returns in violation of 26 U.S.C. § 7206(1); Count 4, conspiracy to commit wire fraud in violation of 18 U.S.C. § 371; Counts 5 and 6, wire fraud in violation of 18 U.S.C. § 1343; Counts 7, 8, and 9, mail fraud in violation of 18 U.S.C. § 1341; Counts 10, 11, and 12, money laundering in violation of 18 U.S.C. § 1956(a); and Counts 13, 14, and 15, money

laundering in violation of 18 U.S.C. § 1957.

On July 6, 2009, the defendant pleaded guilty to Counts 1, 2, and 3 of the superseding indictment, for willfully filing false federal income tax returns for calender years 2002, 2004, and 2005. The government agreed to dismiss Counts 4, 5, and 6, the conspiracy and wire fraud charges arising out of the defendant's participation in creating fictitious and back-dated wills for his brother, Peter J. Karoly, and Peter's wife, Lauren B. Andstadt, if Karoly complied with all terms and conditions of the Plea Agreement.

Following a bench trial, this Court, by Order dated November 19, 2009, found the defendant guilty of mail fraud (Counts 7 through 9) and money laundering (Counts 10 through 15). Defendant waived all rights to file post-trial motions and appeal the verdict. In sum, then, the defendant has been convicted of all of the twelve counts of the Superseding Indictment which were charged against him (with the government agreeing to dismiss the three remaining counts at sentencing, in the event Karoly complied with all terms and conditions of the Plea Agreement).

A. Defendant Karoly's Tax Fraud.

In total, Karoly knowingly failed to report taxable income totaling approximately $5,201,095.00. The resulting tax loss is approximately $1,955,395.00, exclusive of interest and penalties to be calculated by the Internal Revenue Service. The facts that served as the basis for Karoly's guilty plea are set forth below.

1. In 2002, Karoly failed to report more than $834,267 in taxable income.

In 2004, Karoly filed a 2002 federal income tax return that reported $0 in taxable income. Karoly failed to report $834,267 in taxable income resulting from a single civil settlement in which he earned a fee of $938,135. The unreported taxable income results from

Karoly failing to advise his accountant of two checks that he wrote, one for $ 658,775 (this was repayment of a personal loan from Bruce Rothrock Sr. which had previously been made to John Karoly and his wife), and a second check for $175,498.18, payable to John P. Karoly Jr.

The evidence shows that in 2002, Karoly maintained an IOLTA account at Summit Bank. There was a wire transfer on January 22, 2002 in the amount of $1,275,000 from St. Paul Fire and Marine Insurance Co. into the Karoly IOLTA account at Summit Bank. This amount reflects the total civil settlement for his client K.R.. After the settlement funds were wired into Karoly's IOLTA account , there were the following disbursements, several of which were for Karoly's personal uses:

- 1/23/02 - Check #1405, $333,732.82, payable to K.R.
- 1/23/02 - Check #1396, $658,775, payable to Bruce Rothrock (this was repayment of a personal loan previously made by Rothrock to Karoly and his wife)
- 1/23/02 - Check # 1401, $3,000, payable to Heather J. Kovacs (secretary/employee of Karoly Law Office)
- 1/23/02 - Check # 1408, $175,492.18, payable to John Karoly (partial fee)

A fee to Karoly of $938,125 was earned by Karoly Law Office, and recorded on the law office settlement sheets. Karoly only reported approximately $92,000 of this fee on his 2002 tax return. The government has obtained the law office settlement documents to prove the settlement distributions. Karoly wrote the checks out of his IOLTA account directly and did not make deposits into his law office operating account when the fees were earned. Therefore, there is no record of income to him from the law office operating account, even though the $938,125 was earned as of January 22, 2002. By improperly leaving the funds in his IOLTA account, Karoly made it appear that withdrawals were made from client funds and not his own; in this

way, Karoly hid his true income.

K.R. has confirmed the $333,732.82 amount he/she received in settlement. Bruce Rothrock Sr. has confirmed that the $658,775 was for the repayment of a personal loan previously made to Karoly and his wife.

2. In 2004, Karoly failed to report more than $3.3 million in taxable income.

On April 19, 2006, Karoly filed a 2004 tax return that reported $881,353 in taxable income. Karoly failed to report $3,304,258. Again, all of this unreported income is documented by checks and does not include any unreported cash fees collected from criminal cases.

The majority of the unreported income for this year was derived from a civil settlement in a case known as "Hirko." Hirko involved a civil lawsuit against the City of Bethlehem and its Police and Fire Departments. The case was settled after the liability portion of trial. Karoly signed a civil settlement agreement in which the total amount of the settlement was documented at $7.9 million, and his fees were documented at $4.15 million. These figures are documented on the Karoly Law Office settlement worksheet.

Karoly reported to his accountant/tax preparer for 2004 that his fees were $3.15 million. Karoly failed to report an additional $1 million which the settlement agreement noted as "reimbursable or advanced client expenses." In fact, the Karoly firm had substantially less than $1 million in advance or reimbursable client expenses for the Hirko case. Checks can be traced from the $1 million that Karoly failed to report to pay fees and bonuses to expert witness (co-defendant) Dr. John Shane, bonuses to Karoly employees James Heidecker, Heather Kovacs (secretary), and other employees. In addition, Karoly used this money for personal expenses

unrelated to the case such as purchase of stock from Bill Talbert and Talbert Fuel, and personal home kitchen remodeling and pool repairs, all personal expenses that he falsely claimed on his tax returns as business expenses. The amount of "Hirko" expenses claimed and provided by Karoly to his accountant for tax purposes was $259,294.82. As such, the $1 million not disclosed to his accountant received in calendar year 2004 is unreported income to Karoly.

In addition to failing to report the $1 million, Karoly falsely told his accountant that the Hirko case was on appeal and that the accountant should not claim 50% of the remaining $3.15 million as income until the appeal gets resolved. In fact, there was no appeal of the case and the civil settlement agreement provided a release of all claims and appeals. Notably, the only appeal in that case was by Karoly, who appealed the court's finding of contempt against him for his misconduct during the trial; while Karoly was personally fined for his misconduct, this had no effect on the amount of the settlement.[1]

On May 27, 2004, Karoly deposited the sum of $7.39 million into his IOLTA account. On July 26, 2004, Karoly deposited the remaining $500,000 of this settlement into his IOLTA account. Thus, there was a total gross settlement of $7.89 million deposited into his IOLTA account from the Hirko case.

On June 3, 2004, Karoly wrote check #10787 from his IOLTA account payable to John P. Karoly, Esq. for $3.156 million, which was deposited into Karoly's personal Pershing securities account. Karoly had unrestricted access to all of these funds. As such, the deferral of approximately $1.578 million (50% of the $3.15 million) was unlawful since Karoly had access to the full amount and spent it. When Karoly told his accountant to defer 50% of this income,

[1]The contempt finding was reversed on appeal.

this resulted in an additional $1.578 million of unreported income for 2004. Indeed, the remaining 50% of the deferred income was never reported in 2005 or 2006. Karoly has failed to file his 2006, 2007, or 2008 tax returns, so this $1.578 million remains unreported as of this date.

Additionally, the IRS has determined that several claimed "business" expenses Karoly deducted on the return were in fact personal, and not business related.

For example, Karoly deducted $21,258 as depreciation for Morris Black, a kitchen remodeling company. Karoly told his accountant/tax preparer Alan France that the Morris Black expenses were for cabinets in his law office. In reality, Morris Black remodeled Karoly's and his wife's private residence, not Karoly's law office. On July 23, 2004, Karoly wrote a check for $37,200 to Morris Black from his IOLTA account. The government has obtained the Morris Black receipt showing the address of defendant Karoly's personal residence where the work was performed. In addition, Karoly's bookkeeper paid the expense from IOLTA funds at Karoly's direction, and confirmed that no work was performed at Karoly's law office.

Another bogus deduction is a $205,000 deduction Karoly attributed to Talbert Fuels stocks and loans. Karoly told his accountant, France, that Talbert Fuels was a client and that these were deductible expenses to the law office; Karoly failed to disclose that he was paid compensation for being on the Talbert Fuel Board of Directors. William Talbert of Talbert Fuels would have testified that Karoly lent Talbert money and was repaid with Talbert Fuels stock. The $205,000 client expense deducted on Karoly's 2004 tax return as "Cost of Sales" was actually a false deduction that constituted unreported taxable income to Karoly.

Also in 2004, Karoly made a $500,000 charitable donation to the Lehigh Valley Community Foundation which was never intended by Karoly to be used for charitable non-profit purposes. In fact, after taking the $500,000 charitable deduction, Karoly attempted to have the

entire $500,000 donated to his private "shell" foundation, the Urban Wilderness Foundation. The Lehigh Valley Community Foundation refused Karoly's request. Karoly then directed the Foundation to distribute the funds to his church, the UCC Dubbs Memorial Church in Allentown. Karoly then directed the church to distribute funds back to him, in the name of his Urban Wilderness Foundation. As discussed in greater detail below, Karoly used virtually all of the $500,000 for personal expenses, and Karoly's $500,000 "charitable" deduction in 2004 was a false deduction that was not intended, nor ultimately used, for charitable purposes.

3. In 2005, Karoly failed to report more than $1 million in taxable income.

For 2005, Karoly reported $565,963 in taxable income on his federal income tax return. He failed to report $1,062,570. Again, all of this unreported income is documented by checks and does not include any unreported cash fees from criminal cases.

On December 30, 2005 Karoly set up the Urban Wilderness Foundation, a private foundation. He is the President and sole signatory on its checking account. No employees or charitable activities were ever performed by the Urban Wilderness Foundation. It was not established to be a non-profit organization under IRS Section 501(c)(3). On December 30, 2005, Karoly opened a checking account for the Urban Wilderness Foundation, and made a $250,000 deposit, which Karoly deducted as a charitable deduction. This deduction was not allowable since the Urban Wilderness Foundation was not a tax-exempt 501(c)(3) organization. Thus, there is an additional $250,000 of income for 2005.

On January 1, 2006, Karoly wrote a $50,000 check from Urban Wilderness Foundation to Dubbs UCC. Karoly, however, used the $50,000 deduction for 2005 although he did not make any such donation during calendar year 2005. It was made on January 1, 2006. In

fact, the church "giving statement" for the Karolys during 2005 showed a total donation to the church of only $870, and not $50,000 as Karoly had falsely claimed.

On June 3, 2005, Karoly and his wife purchased a 110 acre lot in White Haven, PA. Karoly used $400,000 of funds earned from fees in the "Hirko" case. The remaining $26,713 was paid to seller Steve Wasko from Karoly law office account. Karoly deducted this amount as a "client cost." This amount was not business related and was solely for the personal purchase of the property. As such, it was unlawfully deducted as a business expense and was taxable income to Karoly in 2005.

Also in 2005:

- Karoly deducted $4,555 relating to Morris Black, depreciable asset. As noted earlier, Morris Black was not a client, but rather installed kitchen remodeling in Karoly's home. This $4,555 was taxable income to Karoly.

- Karoly bought a 2005 Lincoln Navigator for his secretary Heather J. Kovacs for $68,900, using law office funds. It was titled in the name of Heather J. Kovacs. The $2,960 deduction Karoly claimed for this expense was taxable income to Karoly.

- Karoly obtained $70,000 worth of Talbert stock which he misrepresented to accountant France as being a "client expense." This $70,000 was taxable income and should not have been deducted. In addition, Karoly received additional stock worth $12,500 from Talbert Fuels for Karoly agreeing to perform services as a member of the Board of Directors. This amount was never reported to France and was taxable income to Karoly.

- On April 13, 2005, Karoly made a loan to client Eric Dalius of $100,000 from Karoly's IOLTA account. Dalius confirmed to agents that Karoly had made him the loan of $100,000 unrelated to any case. Karoly acknowledged this loan to the PA Disciplinary Board. Thus, the $100,000 deduction as "cost of sales" was actually taxable income to Karoly. Dalius paid back the loan.

- The defendant's law office provided client posting sheets to the government in response to a subpoena. Karoly's bookkeeper, Joanne Brantley, explained that whenever a client makes a payment, it is posted in the client posting sheets. The total amount of income in the client posting

sheets for 2005 is $544,042. This amount, however, was never reported to accountant France, nor disclosed on Karoly's return.

B. Defendant Karoly's Mail Fraud Scheme And Money Laundering.

On December 30, 2004, defendant John Karoly, Jr. paid $500,000 to the Lehigh Valley Community Foundation ("LVCF"). His intent was to claim a charitable deduction on his IRS Form 1040 for the year 2004, thereby reducing his federal tax liability. One year later, on December 30, 2005, Karoly created a non-profit organization, the Urban Wilderness Foundation ("UWF"). "At the center of this scheme was Mr. Karoly's campaign to direct [the $500,000] from the Lehigh Valley Community Foundation to his own Urban Wilderness Foundation." Nov. 19, 2009 Order at p. 40.

Defendant Karoly asked the LVCF to make a grant from his $500,000 of donated funds to the UWF. The LVCF refused because their due diligence revealed that the UWF was not a valid tax-exempt organization. Indeed, Karoly never obtained approval from the IRS for tax-exempt status for the UWF, and this Court found that it did "not believe Mr. Karoly considered his [UWF] to be a tax-exempt organization…" Id. at 42.

"When the [LVCF] refused to send the money to the [UWF], Mr. Karoly decided to involve his own church, the Dubbs Memorial UCC, to channel the money to the [UWF]. Because Mr. Karoly was well known and trusted by the pastor at Dubbs Memorial UCC, the church complied with his request to accept the money from the [LVCF] and to then send the money along to the [UWF]. The [LVCF] properly donated the Karoly funds to Dubbs Memorial UCC…Once the money went from the [LVCF] to Dubbs Memorial UCC to the [UWF], Mr. Karoly treated the money as if it were his own. The record in this case is replete with examples of Mr. Karoly using most of the $500,000 charitable donation for his own professional and

personal purposes." Id. at 42-43.

Karoly attempted to justify his use of the money by claiming that he and his wife sold a 108 acre tract of land in Luzerne County to the UWF, and the UWF owed him money for this transaction. The Court found that "[there is absolutely no evidence to support this contention other than Mr. Karoly's self-serving testimony." Id. at 44. In fact, the Court found that Karoly had produced a fake, "made up" legal document to support his story:

> The government introduced into evidence an agreement for the sale of real estate which was found during the execution of a search warrant in Karoly Law Office. It is clear from the evidence that this agreement of sale was 'made up' at some point during the Government's investigation in this case…It appears from the evidence and from logical inferences derived from the evidence that this 'agreement for the sale of real estate' was prepared to support Mr. Karoly's story and had no other purpose. This falsification of a legal document to suit his own purposes and to lend support to his 'story' undermines Mr. Karoly's credibility generally and certainly renders his testimony about the purported sale of the Luzern County property to the [UWF] unbelievable.

Id. at 44.

The Court also made the following finding of fact:

> [The Agreement] was created retrospectively and fraudulently by Mr. Karoly in an attempt to justify his expenditure of the Urban Wilderness Foundation funds as 'payment' for the sale price of the Luzern County property. He intended to create this false document to build support for his contention that he was permitted to spend the Urban Wilderness Foundation's money...Mr. Karoly's creation of this false agreement of sale to support his story undermines his credibility as a witness. I find his testimony...not to be credible.

Id. at ¶¶ 66-67.

In sum, as to the mail fraud counts, the Court held that defendant Karoly "knowingly and willfully participated in a scheme or artifice to defraud the LVCF and the Dubbs Memorial UCC. In fact, the evidence demonstrated very clearly that Mr. Karoly created the scheme or artifice to defraud. He developed the specific intent to defraud when he set out to

have his $500,000 charitable donation channeled back to him by using Dubbs Memorial UCC as a vehicle. Certainly, he used the mails or interstate wire communications in furtherance of his scheme." Id. at 47. Additionally, as part of the scheme, defendant Karoly participated in "financial transactions" and "monetary transactions" that affected interstate commerce, thereby rendering him guilty of each of the money laundering counts set forth in the indictment.

C. Defendant Karoly's Scheme To Steal From His Own Family The Estates Of His Deceased Younger Brother And Sister-In-Law.

Pursuant to the written plea agreement, counts four, five and six, charging defendant Karoly with conspiracy to commit wire fraud and two counts of wire fraud, will be dismissed if Karoly fully complies with all terms and conditions of the Plea Agreement. Nonetheless, the plea agreement provides in paragraph 5(c) that at the time of sentencing the government will "bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant." Here, the evidence relating to the dismissed counts is evidence of abhorrent criminal conduct that reflects Karoly's character, and appropriate for consideration at sentencing pursuant to 18 U.S.C. § 3553(a), 18 U.S.C. § 3661, and U.S.S.G. § 1B1.4. See also United States v. Watts, 519 U.S. 148, 156 (1997) (sentencing court may consider conduct of which defendant has been acquitted if proven by a preponderance of the evidence). That evidence is summarized here.

A federal grand jury indicted defendant John P. Karoly Jr. and his two co-conspirators, John Shane and John Karoly III (a/ka/ "JP" Karoly), for conspiring steal the multi-million dollar estate of defendant Karoly's brother, Peter J. Karoly, Esq., and Peter's wife, Dr. Lauren B. Angstadt (a dentist). The scheme, which defendant Karoly orchestrated, saw Karoly

and his two cohorts, Shane and Karoly's son JP, creating false and fictitious Last Wills and Testaments for both Peter and Lauren, and submitting the fake wills for probate in the Northampton County Orphans Court.

Specifically, Peter Karoly and Lauren Angstadt were tragically killed in a private plane crash in Massachusetts on February 2, 2007. Last Wills and Testaments of Peter Karoly and his wife dated October 10, 1985 were properly executed and maintained by an attorney/trustee named in the Wills. These Wills, the authenticity of which have never been contested, completely exclude defendant Karoly as a beneficiary of either estate.

Literally within hours of his younger brother's tragic death, defendant Karoly orchestrated a massive search for his brother's Will. On Monday, February 5, 2007, the executor named in Peter's and Lauren's authentic 1985 Wills notified defendant Karoly of the Wills' existence, and asked that Karoly notify Lauren's family. Karoly promised that he would, and never did. In fact, several days after Karoly learned of the existence of Peter's and Lauren's respective Wills, Lauren's family notified the court that Lauren had died intestate.

On February 19, 2007, Peter's and Lauren's authentic Wills were probated. In the two weeks leading up, Karoly had told conflicting stories in an effort to lay the groundwork for the ensuing, miraculous discovery of the fake wills on February 20 – the very day after the authentic wills were probated. For example, at Lauren's funeral on February 11, 2007, Karoly told Lauren's sister that Peter had given him a packet of documents the previous summer that he had placed in storage, and Karoly stated that he didn't know the contents of those documents but he would check to see if they included a will; by contrast, on February 14 or 15, 2007, Karoly told the executor of the authentic Wills that he, Karoly, in fact knew that his brother had prepared a more recent will and he just needed time to locate his "copy" if it.

Peter's and Lauren's authentic Wills left defendant Karoly nothing.

Miraculously, the fake wills, which were dated June 2, 2006, left Karoly a substantial portion of Peter's and Lauren's multi-million dollar estates, including Peter's entire law practice, debt free, as well as control of Peter's business and financial accounts. Defendant Karoly claimed to have placed the fake wills in an unsecured, remote storage trailer owned by one of his former clients, located some 20 minute drive from defendant Karoly's home; the storage trailer had no electricity or heat, water leaked into it, and it did not keep an electronic record of who entered and left the storage facility, or the dates of entry. The fake Wills were not discovered by any independent third party, but by Karoly's son, JP, and JP's roommate. The fake Wills were allegedly found in this unsecured, remote storage trailer, despite that defendant Karoly had access to a safe in his home, and several secured public storage facilities located in close proximity (i.e., less than one mile) from his home and office. Notably, unlike the remote, unsecured storage trailer in which the fake wills were allegedly found, the public storage facilities located near Karoly's home were not only secured, but they had video surveillance and kept an electronic record of who came and went, and when.

Upon learning of the fake wills and their contents, all of defendant Karoly's sisters immediately filed a civil Will contest action in the Northampton County Orphans Court challenging their authenticity. Significant evidence came to light showing that the June 2006 wills were fake, including:

- Defendant Karoly's cousin stated in a sworn affidavit and testified in a deposition that days before the fake wills were allegedly found, defendant Karoly summoned him to his home and, in the presence of only Karoly and Karoly's two indicted co-conspirators (Karoly's son JP, who allegedly found the fake wills, and John Shane, who signed the fake wills as their lone witness), Karoly presented him with the fake will of Karoly's brother Peter, and Karoly asked that he (Karoly's cousin) sign it. In other words,

weeks after Karoly's brother had died, Karoly asked his cousin to sign a fake will of Karoly's brother. Karoly's cousin refused.

Notably, Karoly, despite being represented by counsel, decided to undertake the questioning of his cousin at his cousin's deposition. The deposition was video recorded and it has been reviewed by the government. Karoly's tone and demeanor while questioning his own cousin – who dared come forward with the truth – and the extent to which Karoly by his questions sought to confuse, belittle, embarrass, and bully his cousin, was shocking and despicable, and unworthy of anyone who would call himself an officer of the Court.

- expert opinion that the testator signatures on the fake wills were forgeries;
- the names of four of the nine beneficiaries named in the fake wills, all of who were close friends of Peter and Lauren, were misspelled;
- the fake wills were allegedly witnessed by only one person, John Shane, an indicted co-conspirator who was 73 years old at the time Peter allegedly asked him to witness his will; all of the dozens of Wills produced by Peter Karoly's law office between 1985 and 2007, including Peter's authentic Will, had at least two witnesses;
- the fake wills were prepared in a completely different format from any other Will produced by Peter's law office, and were inconsistent with not only Peter's authentic Will, but every single Will produced by the Peter Karoly Law Office between 1996 and 2007; and
- no one, attorney or otherwise, despite the media attention of the tragic plane crash and civil Will contest in this case, has come forward to claim that they prepared the fake wills, and the fake wills were not recovered from any of the testator's personal computers or those in his law office.

III. GOVERNMENT'S RECOMMENDED SENTENCING CALCULATIONS

A. Statutory Maximum Sentence.

The defendant could be sentenced to a statutory maximum sentence of 159 years

imprisonment, a five-year period of supervised release, a $3,750,000 fine, and a $1,200 special assessment.

B. Advisory Sentencing Guidelines Calculation.

The Probation Office correctly calculated the defendant's advisory Guideline range as follows:

Base Offense Level (§2S1.1(a)(1) referring to §2B1.1(a)(1))	7	
Upward adjustment for loss of more than $400,000 (§2B1.1(b)(1)(H))	+14	
Upward adjustment for conviction under § 1956 (§2S1.1(b)(2)(B))	+2	
Upward adjustment for sophisticated laundering (§2S1.1(b)(3))	+2	
Upward adjustment for abuse of position of trust/special skill (§3B1.3)	+2	
Upward adjustment for obstruction of justice (§3C1.1)	+2	
Adjusted Offense Level	29	
Grouping Closely Related Counts, Money Laundering, Mail Fraud and Tax counts (§3D1.2, 3D1.3, 3D1.4)	+1	
Total Offense Level	30	
Criminal History Category	I	
Advisory Sentencing Guidelines Range		**97 to 121 months imprisonment**

IV. GOVERNMENT'S RECOMMENDED SENTENCING ENHANCEMENTS AND OPPOSITION TO CERTAIN SENTENCING DEPARTURES.

A. Karoly Obstructed And Impeded The Administration Of Justice By

Fabricating A Fictitious Document And Providing It To The Government In Response To A Grand Jury Subpoena.

In a premeditated attempt at concocting an otherwise nonexistent defense, Karoly - a successful attorney of many years - used his lawyerly skills to create a fabricated, forged, and backdated "Agreement for the Sale of Real Estate," which he then produced for the grand jury investigating his many crimes. At trial, the government offered irrefutable evidence proving that "the agreement" Karoly concocted was indeed fraudulent. Karoly's obstruction of justice then continued during the trial itself when he elected to testify under oath, and willfully attempted to hoodwink the Court by maintaining that his fraudulent "agreement" was authentic, all the while knowing that it was not. These actions are the very epitome of obstruction of justice.

United States Sentencing Guidelines (U.S.S.G.) Section § 3C1.1 provides that a defendant is subject to a two-level enhancement if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede the administration of justice during the course of the investigation . . . and the obstructive conduct related to the defendant's offense of conviction or any relevant conduct, or a closely related offense . . . ." The government has the burden of proving the applicability of this enhancement by a preponderance of the evidence. See United States v. Napier, 273 F.3d 276, 279 (3d Cir. 2001).

A two-level adjustment is authorized under Section 3C1.1 in a case such as this, where (a) a defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution or sentencing of the instant offense of conviction, and (b) the obstructive conduct related to the defendant's offense of conviction and any relevant conduct. See U.S.S. G. § 3C1.1 (a)-(b). Notably, as one of the

"examples of covered conduct," the Guidelines expressly identifies the very obstruction perpetrated by Karoly in this case, that is, "producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding." Id. at Application Note 4(c).

The Application Notes also provide that committing perjury is among the types of conduct to which this adjustment applies. Id. at Application Note 4(b). A court can enhance a defendant's sentence under Section 3C1.1 if the court finds that the defendant committed perjury at trial. See United States v. Dunnigan, 507 U.S. 87, 88-89 (1993)("a defendant's right to testify does not include a right to commit perjury."). To justify use of the enhancement, the trial court must find evidence that the defendant gave false testimony concerning a material matter with the willful intent to provide false testimony. Id. at 94.

A defendant who takes the stand and specifically denies criminal liability, but is later convicted by a jury, faces the danger of an obstruction of justice enhancement. United States v. Boggi, 74 F.3d 470 (3d Cir. 1996). As the Court stated in Boggi:

> The jury listened to testimony including Boggi's testimony that he was innocent, evaluated the credibility of the witnesses, and weighed the evidence. In convicting Boggi, the jury necessarily rejected his testimony that he was innocent of the extortion offenses charged. In sentencing Boggi, the district properly considered this fact and properly reasoned that "a guilty verdict, not set aside, binds the sentencing court to accept the facts necessarily implicit in the verdict."

Id. at 478-79. While the district court was not explicit about the materiality of Boggi's denials, the Third Circuit found that the record reflecting Boggi's false testimony denying elements of his alleged offense was necessarily material. Id. at 479 (materiality was clear because "[i]f the jury had believed Boggi's testimony and disbelieved some or all of the other witnesses who offered conflicting testimony, then Boggi would not have been convicted."); see also United States v.

Fiorelli, 133 F.3d 218, 225 (3d Cir. 1998)("if a sentencing court is going to rely on the verdict of the jury as laying part of the foundation for a Section 3C1.1 enhancement, there should be no question but that the relevant finding was necessarily made by the jury.").

The evidence establishing that Karoly knowingly produced a fictitious "Agreement for the Sale of Real Estate," his motivations for doing so, and his false testimony relating to it, are all set forth above and addressed in detail in the Court's November 19, 2009 Order. Notably, the Court, after considering all of the relevant evidence, including Karoly's sworn trial testimony, found that the "agreement for the sale of real estate" was "made up," "created retrospectively and fraudulently by Mr. Karoly," and that Karoly had "falsif[ied] a legal document to suit his own purposes and to lend support to his 'story'[.]" See Nov. 19, 2009 Order at p. 44 and ¶¶ 66-67. The Court deemed Karoly's trial testimony a "story" that was "unbelievable" and "not to be credible." Id. "Unbelievable" and "not to be credible" are words often used by defense counsel to describe the testimony of cooperating defendants with long and heinous criminal histories; it is ironic that these words have now been used by a court to describe the conduct and testimony of a lawyer.

In short, Karoly perjured himself at trial. This is evidenced by the Court's verdict on all counts being tried by the Court, i.e. mail fraud and money laundering, and the Court's rejection of Karoly's claim that he believed his Urban Wilderness Foundation was tax-exempt and that he had purchased the 104 acres in the Poconos for the purpose of developing a camp for underprivileged and inner city kids. The Court's verdict necessarily required the court to find that Karoly lied in his sworn trial testimony, and indeed, the Court made this finding.

Further, it is clear that Karoly's testimony was not the result of confusion, mistake, or faulty memory. His testimony did not confuse or forget small or insignificant details;

instead, Karoly lied about the key issue in the trial.

In short, the two-level obstruction enhancement was created for this precise situation. And the relevant findings supporting this enhancement have already been made by the Court. Obstruction of this sort should never be tolerated or left unpunished, much less when the perpetrator is a member of the Bar and an officer of the Court. Karoly's advisory sentencing guideline range should be increased to reflect this brazen and shameful misconduct.

B. The Court Should Apply A Two-Level Enhancement Under U.S.S.G. §3B1.3, Abuse Of A Private Position Of Trust, Since Defendant Used His Position As A Trusted Member Of The Church And Abused This Position Of Trust In Order To Facilitate His Fraudulent Scheme.

An abuse of position of trust enhancement should apply if a defendant occupied a position of trust and "abused his position in a way that substantially facilitated the commission or concealment of the crime." United States v. McMillen, 917 F.2d 773, 775 (3d Cir. 1990). The Third Circuit as explained:

> As the Ninth Circuit has observed, "the primary trait that distinguishes a person in a position of trust from one who is not is the extent to which the position provides the freedom to commit a difficult-to-detect wrong." United States v. Hill, 915 F.2d 502, 506 (9th Cir. 1990). The Hill court stated that a defendant does not ordinarily occupy a position of trust if any attempt by the defendant to abuse his position would readily be detected by the other party, but "if one party is able to take criminal advantage of the relationship without fear of ready or quick notice by the second party, the second party has clearly placed a level of trust in the first. Id."

United States v. Lieberman, 971 F.2d 989, 993 (3d Cir. 1992).

The facts in this case involving defendant Karoly's abuse of a private position of trust within his church warrant the imposition of the two-level enhancement based upon Karoly's well-established private trust relationship with his church and Pastor. Indeed, the facts here are similar to the facts in United States v. Dullum, 560 F.3d 133 (3d Cir. 2009). Dullum was a Special Agent with the U.S. Secret Service and an active member of his New Jersey church.

"[W]ithin his church, [Dullum] served in a senior leadership position, teaching classes, and counseling fellow members who were struggling with alcohol and substance abuse." Id. at 135. In that capacity, Dullum worked closely with two particular church members who were recovering alcoholics and drug addicts, and because they were "a little slow" and struggling financially, Dullum also offered to act as their financial advisor. One of the church members became gravely ill in June 2004 and told Dullum that she wanted another church member provided for upon her death. Dullum prepared a Will and trust, but the woman never signed it before her death and died intestate. Id. at 135-36. Dullum then prepared another Will which he backdated to 2004, forged the decedent's signature, and named himself as Executor and the other church member as primary beneficiary. Dullum received approximately $29,000 from decedent's pension fund, deposited the check in an estate bank account he had opened, and then transferred all of the money to his own personal account. Dullum paid the primary beneficiary a small amount in an effort to keep him quiet.

The Secret Service began an internal investigation of Dullum in July 2005 after Dullum's bank reported suspicious activity regarding Dullum's accounts. When agents questioned Dullum about the bank transfer from the estate account to his personal account, he falsely told them that the decedent had rented his beach house. Dullum was ultimately convicted of mail fraud and bank fraud charges. The Third Circuit upheld the district court's finding that Dullum had "abused a position of public and private trust" toward the two church members because he was a Secret Service agent and a trusted advisor at the church. Dullum, at 140.

Similarly, Karoly was a high profile attorney in the Lehigh Valley community and a trusted member of the defrauded church and its Pastor. The private trust relationship between Karoly and his church, the Dubbs Memorial UCC Church and Pastor Brown, is well established

by Karoly's own testimony at trial, and corroborated by the testimony of Pastor Brown. See Trial Transcript, 9/15/09 at pp. 102-133, 137-161, and 9/16/09 at pp. 184-185, 186-189. In particular, the following facts were adduced by the trial testimony of Pastor Brown and defendant Karoly:

- Pastor Brown knew John Karoly as a member of the church and as an attorney for 7 years while he was Pastor at the Dubbs Memorial UCC Church in Allentown;
- Karoly was a lifelong member of Dubbs Memorial UCC church;
- Karoly was a deacon of the church;
- Karoly was President of the congregation multiple times, a position elected by the congregation;
- Karoly contributed regularly to various church fund raisers, and for repairs to church equipment, such as the church boiler and church organ;
- Karoly conducted services at the church in the minister's absence;
- Karoly was confirmed in the church;
- Karoly and his wife taught vacation bible school at the church;
- Karoly performed legal services for Dubbs Memorial UCC church in assisting the church to obtain an occupancy permit;
- Karoly donated large amounts of money to Dubbs Memorial UCC church prior to the 2007 fraudulent scheme ($52,400 in 2004; $50,670 in 2006; $80,300 in 2007);
- Karoly gave Pastor Brown personally $30,000 between January 2006 and February 2007. Karoly gave $10,000 to Pastor Brown in January 2006 for additional compensation, another $10,000 to Pastor Brown in February 2007 as additional compensation, and an additional $10,000 in September 2007 as additional compensation;
- Karoly asked Pastor Brown to perform the funeral service for Karoly's brother Peter J. Karoly, and held a catered meal for hundreds of people at the Dubbs Memorial UCC church following the funeral;
- Karoly performed legal services for Pastor Brown personally, including preparing Wills for Pastor Brown and his wife;

- Karoly performed legal services in representing the church to get approval from City Council for parking lots for the church at a time when this was difficult to obtain;

- Karoly was the largest contributor to the church.

The Dullum court cited a three-part test from United States v. Pardo, 25 F.3d 1187 (3d Cir. 1994), to determine whether a particular position is a position of trust: "(1) whether the position allows the defendant to commit a difficult-to-detect wrong; (2) the degree of authority which the position vests in defendant vis-a-vis the object of the wrongful act; and (3) whether there has been reliance on the integrity of the person occupying the position." Dullum, 560 F.3d at 140 (internal citations omitted); accord United States v. Starnes, 583 F.3d 196 (3d Cir. 2009).

These factors "should be considered in light of the guiding rationale of [U.S.S.G. § 3B1.3]: to punish 'insiders' who abuse their position rather than those who take advantage of an available opportunity." Dullum, 560 F.3d at 140.

In explaining how Dullum, a Secret Service agent and trusted member of the church, held a private position of trust, the Third Circuit reasoned:

> Through Dullum's involvement with his church, he formally acted as a teacher, advisor, and counselor to [decedent] and [other church member and primary beneficiary]. He spent substantial time with [them] over approximately three years as a trusted church figure of authority, counseling them with respect to their substance and alcohol abuse, and as their financial advisor. In this capacity, Dullum had the ability and freedom to commit a difficult-to-detect wrong in forging [decedent's] will and acting as her executor. He was not simply taking advantage of an available opportunity…Undoubtedly, in Dullum's senior position, [the decedent and beneficiary] relied on his integrity…Thus, we hold that Dullum's position was a private position of trust. Further, the court did not err in finding that Dullum abused that position to apply the two-level enhancement under § 3B1.3.

Dullum, 560 F.3d at 140-41.

Consideration of the relevant factors establishes that defendant Karoly's conduct likewise amounted to a position of private trust. First, Karoly's position within the church and his relationship with Pastor Brown allowed him to commit the difficult to detect mail fraud and money laundering scheme. Defendant Karoly's fraudulent scheme, and his ability to engage it without detection, was facilitated by his long and trusted relationship with his church, the Pastor, and his status as an attorney in the community. This trust allowed defendant Karoly to direct and instruct the Pastor to make distributions of donated charitable funds from the LVCF, for the personal use and benefit of defendant Karoly, without the Pastor questioning the integrity or motives of the defendant. It was precisely Karoly's position and relationship with the church and Pastor which provided him with the freedom to commit these difficult to detect mail fraud and money laundering transactions for which he was convicted. Second, it was that very trusted relationship established by defendant Karoly, that is, large church donor, valued church member, and high profile attorney in the community, which allowed Karoly to direct the Pastor to make distributions of the charitable funds without questioning Karoly's true motives. This was not merely an available opportunity which Karoly took advantage of to commit his crimes. Indeed, there was no available opportunity except for Karoly's abuse of his position of trust in creating the opportunity himself. Finally, it was Pastor Brown's naive reliance on defendant Karoly's integrity that allowed the defendant to use the position of trust to commit the crimes without detection. In short, Karoly created a trusted, loyal, and respected position within the church and community, and then abused that position of trust to commit his crimes and avoid detection.

C. Additional Relevant Fraudulent Conduct Should Be Considered By The Court In Imposing Sentence Pursuant To U.S.S.G. §§ 1B1.3 And 1B1.4, And 18 U.S.C. § 3661.

The government will prove at sentencing that defendant Karoly committed

additional relevant fraudulent conduct directly in connection with the charges for which he was convicted, and which was previously unknown to the government at the time of trial. As explained below, despite defendant Karoly's knowledge that the $33,864.03 in funeral expenses and catering for his brother's funeral had already been paid in full solely by Dubbs Memorial UCC Church in February 2007, as Karoly himself had directed, Karoly nonetheless submitted invoices for reimbursement six months later to the Administrator Pendente Lite of the Estate of Peter J. Karoly. Karoly sought reimbursement for himself and his wife for the full amount of these expenses, despite knowing that he had not paid these expenses and was not entitled to reimbursement. Thus, not only has this attorney defendant defrauded a public community charity and his church, he has also further defrauded the Estate of his deceased brother. This additional relevant fraudulent conduct should be considered by the court at sentencing, as it further demonstrates why Karoly should be sentenced at the highest end of the applicable advisory sentencing guidelines range.

Advisory United States Sentencing Guideline §1B1.3, Relevant Conduct (Factors that Determine the Guideline Range), provides, in relevant part:

> (a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics, and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:
>
> > (1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant…
> >
> > > that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course

> of attempting to avoid detection or responsibility for that offense;
>
> (2) solely with respect to offenses of a character for which §3D1.2 would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction;
>
> (3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions; and
>
> (4) any other information specified in the applicable guideline.

Further, advisory United States Sentencing Guideline § 1B1.4, Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines) provides:

> In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. See 18 U.S.C. § 3661.

Based upon these two guideline sections, defendant Karoly's additional relevant fraudulent conduct, which clearly is evidence going to defendant's "character" and "conduct," should be considered by the Court, and warrants that Karoly be sentenced at the highest end of the sentencing guideline range.

The Additional Criminal Conduct

The government will prove at sentencing that defendant John P. Karoly Jr. committed further acts of criminal fraud that were unknown to the government at the time of trial. These additional criminal acts were directly connected with his charged fraudulent conduct of money laundering in counts 10 and 13 of the superseding indictment, and specifically

included in the mail fraud counts (counts 7 through 9) at paragraph 15. This charged criminal conduct, for which defendant was convicted, involved the defendant using charitable funds donated by the LVCF to the Dubbs Memorial UCC Church to pay for the personal expenses of John P. Karoly Jr. Specifically, defendant Karoly directed the Pastor of Dubbs Memorial UCC Church to pay for his (Karoly's) brother's funeral costs and catering expenses totaling $33,864.03, using donated charitable funds from the LVCF.

The government proved at trial that Dubbs Memorial UCC Church in fact paid these expenses, not defendant Karoly. The expenses were paid with Dubbs Memorial UCC checks to Maison Blanc (caterers) on February 10, 2007, and J.S. Burkholder Funeral Home (funeral expenses) on February 22, 2007. See Government Trial Exhibits Nos. 31d and 33a, 33b and 33c.

The government will prove the following facts at sentencing:

On August 1, 2007, defendant John P. Karoly Jr. obtained a copy of an 8/1/07 invoice from Maison Blanc caterers issued to John P. Karoly, Esq. showing a $0 balance.

On August 2, 2007, defendant Karoly faxed a package of documents on Karoly Law Office letterhead, from John P. Karoly, Jr., dated 8/2/07, to Wendy at the office of Tallman, Hudders and Sorrentino, which is the law office of the Administrator Pendente Lite of the Estate of Peter J. Karoly, Thomas A. Wallitsch, Esquire. These documents included the following:

- a copy of a February 7/February 8, 2007 invoice from Maison Blanc caterers to John P. Karoly, Esq. showing a balance of $20,000;
- a copy of an 8/1/07 Maison Blanc invoice showing a $0 balance, issued to John P. Karoly, Esq.;
- a copy of an undated J.S. Burkholder Funeral Home invoice to John P. Karoly, Esq., showing a total of $13,919, with a circled amount of -$13,864.03;

- a copy of another J.S. Burkholder Funeral Home invoice to John P. Karoly, Esq. showing a $0 balance as of 8/1/07; and

- **a document entitled "FUNERAL EXPENSES PAID BY JOHN AND REBECCA KAROLY" listing as follows:**

J.S. Burkholder Funeral Home, Inc.	**$13,864.03**
Maison Blanc	**$20,000.00**
Total:	**$33,864.03**

On August 16, 2007, a paralegal at the law firm of Tallman, Hudders and Sorrentino sent correspondence through the United States mail on firm letterhead to John P. Karoly, Jr. Esquire, Karoly Law Offices, P.C., 1555 N. 18th Street, Allentown, PA 18104, with cc: to Thomas A. Wallitsch, Administrator, P.L., as follows:

"Dear Attorney Karoly:

I am enclosing a check to your order in the amount of $33,864.03, representing reimbursement to you for payments of the following funeral expenses:

1. J.S. Burkholder Funeral Home, Inc. - funeral bill - $13,864.03; and
2. Maison Blanc - funeral luncheon - $20,000.

Please let me know if you have any questions."

It is noted that this false document prepared and submitted by defendant Karoly entitled "Funeral Expenses Paid By John and Rebecca Karoly" is at least the second false document that defendant Karoly falsely created and submitted in this case. The first false document was the fictitious "Agreement of Sale," discussed in detail above.

On August 21, 2007, the check in the amount of $33,864.03 was deposited into the personal checking account of John P. Karoly Jr. and Rebecca J. Karoly at Lafayette Ambassador Bank.

At no time did defendant Karoly advise Administrator Wallitsch, or anyone in his firm (Tallman, Hudders and Sorrentino) that the Dubbs Memorial UCC Church had in fact paid

these expenses and not John P. Karoly and Rebecca J. Karoly. In fact, since the invoices were all issued to John P. Karoly, Esq., Karoly intentionally misrepresented that he had paid these expenses, knowing full well that he had not. In sum, this defendant defrauded the Estate of Peter J. Karoly – the defendant's own brother – of the sum of $33,864.03.

The government first learned of this additional fraudulent conduct through the filing of an "Interim Account" report for the Estate of Peter J. Karoly covering the period February 3, 2007 through October 31, 2009. The report was filed on or about November 3, 2009 in the Northampton Court of Common Pleas by the Administrator Pendente Lite of the Estate of Peter J. Karoly. A review of this "Interim Account" report at page 69 notes that Administrator Thomas A. Wallitsch listed $33,864.03 being reimbursed to John P. Karoly Jr. for funeral expenses of Peter J. Karoly.

This additional fraudulent conduct certainly goes to the "background, character and conduct of the defendant," and should be considered by the Court "without limitation" as provided in advisory Sentencing Guidelines § 1B1.4 and 18 U.S.C. § 3661. For this additional reason, a sentence at the highest end of the advisory guideline range is appropriate.

D. Karoly Is Not Entitled To A Departure For Any Alleged Charitable Donations.

Defendant Karoly may argue for leniency based on an alleged history of making charitable donations. However, the defendant's philanthropic efforts - to the extent the Court can even accept as true Karoly's representations regarding them - were not so exceptional as to warrant any sort of sentencing departure. As the Seventh Circuit very recently noted, "[w]ealthy people commonly make gifts to charity. They are to be commended for doing so but should not be allowed to treat charity as a get-out-of-jail card." United States v. Vrdolyak, No. 09-1891,

2010 WL 323055, at *6 (7th Cir. Jan. 29, 2010) (citing United States v. Repking, 467 F.3d 1091, 1095-96 (7th Cir. 2006) (per curiam); United States v. Ali, 508 F.3d 136, 149 (3d Cir. 2007); United States v. Cooper, 394 F.3d 172, 176- 77 (3d Cir. 2005)). As if commenting on this very case, the Vrdolyak court further explained:

> [C]haritable works must be exceptional before they will support a more-lenient sentence, for…it is usual and ordinary, in the prosecution of similar white collar crimes involving high-ranking corporate executives… to find that a defendant was involved as a leader in community charities, civic organizations, and church efforts. People who donate large sums because they can should not gain an advantage over those who do not make such donations because they cannot. To allow any affluent offender to point to the good his money has performed and to receive a downward departure from the calculated offense level on that basis is to make a mockery of the Guidelines. Such accommodation suggests that a successful criminal defendant need only write out a few checks to charities and then indignantly demand that his sentence be reduced. The very idea of such purchases of lower sentences is unsavory, and suggests that society can always be bought off, even by those whose criminal misconduct has shown contempt for its well-being.

Vrdolyak, 2010 WL 323055, at *6 (internal citations and quotations omitted).

Here, defendant Karoly's most significant charitable donations appear to have been made to UCC Dubbs Memorial Church in Allentown, i.e., the very church that he defrauded in the course of executing the money laundering scheme described above. Indeed, the very nature of Karoly's money laundering scheme speaks volumes about his views on charity: Karoly used his church to funnel a bogus $500,000 charitable contribution to his "foundation," and the Court found the record "replete with examples of [defendant] Karoly using most of the $500,000 charitable donation for his own professional and personal purposes." Nov. 19, 2009 Order at 42-43. This finding obviously calls into question the validity of any of defendant' Karoly's other alleged "charitable" acts. And even accepting his philanthropic history at face value, that history is not so extraordinary as to warrant a sentencing departure or variance.

E. Karoly Is Not Entitled To An Acceptance Of Responsibility Departure.

Defendant Karoly may claim entitlement to an acceptance of responsibility departure under U.S.S.G. § 3E1.1.[2] Karoly, however, is not entitled to such a departure because he has obstructed justice and failed to accept any responsibility for any of his conduct.

As explained in Section IV(A) above, Karoly obstructed justice by providing the government with a fabricated legal document in response to a grand jury subpoena, and his sentence therefore should be enhanced under U.S.S.G. § 3C1.1. Application Note 4 to U.S.S.G. § 3E1.1 provides: "Conduct resulting in an enhancement under § 3C1.1 (Obstructing or Impeding the Administration of Justice) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§3C1.1 and 3E1.1 may apply." This is not one of those cases.

As the Honorable Judge Paul Diamond of this district recently explained, there is a circuit split regarding what constitutes an "extraordinary case" within the meaning of U.S.S.G. § 3E1.1, Application Note 4. United States v. Gomez, No. 06-443-02, 2009 WL 1350989, at *3-4 (E.D.Pa. May 22, 2009). To determine whether a case is "extraordinary," the Fifth, Seventh, Eighth, and Tenth Circuits consider "the totality of the circumstances, including the nature of the obstructive conduct and the degree of acceptance of responsibility." Id. This test was first enunciated by the Eighth Circuit in United States v. Honken, 184 F.3d 961 (8th Cir.1999), which held that while there is no magic formula for defining an "extraordinary case," sentencing courts should consider:

[2] Paragraph 8(e) of the parties' Plea Agreement states: "The government's position is that the defendant is not entitled to any acceptance of responsibility departure under Guideline Section 3E1.1. The defendant reserves the right to argue to the Court that he has accepted responsibility and may be entitled to a two-level departure under Guideline Section 3E1.1."

> the totality of the circumstances, including the nature of the obstructive conduct and the degree of acceptance of responsibility. Among other things, the district court should [consider] whether, for example, the obstruction of justice was an isolated incident early in the investigation or an on-going effort to obstruct the prosecution. It should [consider] whether [the defendant] voluntarily terminated his obstructive conduct, or whether the conduct was stopped involuntarily by law enforcement. The district court should [note] whether [the defendant] admitted and recanted his obstructive conduct, or whether he denied obstruction of justice at sentencing…The Honken Court further suggested that such an extraordinary case may exist where a defendant who has obstructed justice nonetheless earns, by his other positive actions, an adjustment for acceptance of responsibility.

Id. (internal citations and quotations omitted).

By contrast, the standard in the Sixth and Ninth Circuits is "whether the defendant's obstructive conduct is not inconsistent with the defendant's acceptance of responsibility." Id. (citing United States v. Hopper, 27 F.3d 378, 383 (9th Cir.1994)). The Hopper court holds that "cases in which obstruction is not inconsistent with an acceptance of responsibility arise when a defendant, although initially attempting to conceal the crime, eventually accepts responsibility for the crime and abandons all attempts to obstruct justice." Id. (citing Hopper, 27 F.3d at 383).

The Third Circuit has never explicitly adopted either standard, though it has referenced both of them. In a non-precedential opinion, the Court applied Honken' s "totality of the circumstances" test. See United States v. Brown, 80 Fed. Appx. 794, 795 (3d Cir.2003) (citing Honken, 184 F.3d at 968)). And in a recent precedential decision, the Court rejected defendant's contention that her case was "extraordinary" under Hopper. See United States v. Lessner, 498 F.3d 185, 199 (3d Cir.2007).

Here, as in Judge Diamond’s decision in Gomez, any argument that this is an “extraordinary case” fails regardless of the standard against which it is measured. In the course

of this proceeding, defendant Karoly created a fabricated legal document and perjured himself while attempting to defend its authenticity. And this was hardly an isolated incident. To the contrary, for a period of several months Karoly stonewalled the government's efforts to obtain documents pertaining to his Urban Wilderness Foundation, including the "Agreement of Sale," and then only produced the false document following a contempt hearing. Moreover, Karoly has never produced the original document, despite being required to do so by subpoena and court order.

Nor did Karoly voluntarily terminate or at anytime abandon his efforts to obstruct the truth-seeking process. To the contrary, Karoly attempted to defend his fabricated "Agreement of Sale" by providing sworn trial testimony that amounted to outright perjury. As the Court described:

> [The Agreement] was created retrospectively and fraudulently by Mr. Karoly in an attempt to justify his expenditure of the Urban Wilderness Foundation funds as 'payment' for the sale price of the Luzern County property. He intended to create this false document to build support for his contention that he was permitted to spend the Urban Wilderness Foundation's money...Mr. Karoly's creation of this false agreement of sale to support his story undermines his credibility as a witness. I find his testimony...not to be credible.

Id. at ¶¶ 66-67.

Finally, Karoly has never taken responsibility, much less recanted or apologized for his reprehensible, obstructive misconduct. Instead, he attempted to lie his way out of it. In sum, the only thing extraordinary about this case is the extent to which this defendant attorney used his legal training and experience to manipulate his victims and perpetuate a fraud on this Court. For all of these reasons, defendant Karoly is not entitled to an acceptance of responsibility departure.

V. ANALYSIS OF SENTENCING FACTORS

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) suggests that the most appropriate sentence is one at the high-end of the advisory Guidelines range.

The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

This Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[3]

[3] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having

Here, the defendant is not in need of educational or vocational training, or medical care. Indeed, the defendant committed his crimes while actively and gainfully employed as an attorney. A review of the remaining 3553(a) factors illustrates the propriety of a sentence at the high-end of the advisory Guidelines range.

1. The nature and circumstances of the offense, and the history and characteristics of the defendant.

The disgraceful nature of this defendant-attorney's crimes is addressed in the introductory Section I of this Memorandum. The character of this defendant is reflected by the appalling criminal activity he willfully and consistently engaged in over the course of many years, as discussed more fully in the preceding Section II.

2. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment.

In addition to the damage defendant Karoly has caused to the public's confidence in the integrity of the legal community, one need only read the newspapers today to understand the devastating impact economic crime of this sort can have upon society. Indeed, fraud schemes are making headlines on a daily basis because of the resulting disastrous financial effects to the national economy. These are crimes that affect us all. And perhaps the greatest impact is felt by the citizens who, unlike Karoly, pay their fair share of taxes and report their true and accurate income to the IRS, despite that the payment of the tax may cause them a hardship.

Indeed, Karoly compounded his crimes by knowingly and wilfully failing to

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explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

report millions of dollars in 2002, 2004 and 2005. Filing false tax returns to significantly under-report and underpay lawfully required taxes not only cheats the vast majority of citizens who pay what they owe, but damages the national economy and the government's ability to serve the citizenry. The IRS, not having the resources to double check every tax return, depends on citizens honestly and completely reporting taxable items and paying what is owed. When tax cheating is committed by an attorney who is obligated to uphold a higher ethical standard and promote respect for the law, it is even more egregious. The Honorable Louis H. Pollak astutely observed the following when sentencing restauranteur Neil Stein on federal income tax charges:

> The United States is a great big enterprise, and it's easy to think of it as impersonal, and largely engaged in regulating us, and perhaps interfering too often, but it's our big enterprise. Whether it does well or ill, it's our responsibility – I think it was Justice Holmes who said that paying taxes is the price of civilization. When one of decides to cheat on taxes, the real victims are the rest of us . . . [I]f it were to become a customary way of doing business, or failing to do business, the integrity or the capacity of our government to function comes under threat. It's in that sense that we are the victims.

United States v. Stein, Criminal No. 04-577, (E.D.Pa. January 20, 2006), sentencing transcript at 104.

Any sentence imposed in this case must reflect the gravity of these offenses, promote respect for the law, and provide just punishment for the considerable harm defendant Karoly has caused.

3. The need to afford adequate deterrence and to protect the public from further crimes of the defendant.

For the reasons stated above, a sentence at the high-end of the advisory Guidelines range is necessary to afford both specific and general deterrence to criminal conduct, and in particular, the insidious conduct of this attorney-defendant. It is necessary to preserve the

integrity of the legal community and to protect society from fraudsters like Karoly who would perpetrate similar schemes. Such a sentence is also necessary to protect the public from further crimes of this defendant, for at least as long as he is incarcerated.

4. The need to avoid unwarranted sentence disparities.

While the sentencing Guidelines are advisory, they remain the sole means available for assuring some measure of uniformity in sentencing, fulfilling a key Congressional goal in adopting the Sentencing Reform Act of 1984. Reference to the Guidelines, while carefully considering the 3553(a) factors particularly relevant to an individual defendant, is the only available means of preventing the disfavored result of sentence disparities resulting from random judicial assignments. The Third Circuit has explained:

> Even under the current advisory system, district courts must "meaningfully consider" § 3553(a)(4), i.e., the applicable category of offense…as set forth in the guidelines. The section of *Booker* that makes the Guidelines advisory explains that the remaining system, while not the system Congress enacted, nonetheless continue[s] to move sentencing in Congress' preferred direction, *helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary*. The Guidelines remain at the center of this effort to avoid excessive sentencing disparities, and, as the *Booker* Court explained, the Sentencing Commission will continue to promote uniformity in the sentencing process" through the Guidelines. We have likewise observed that the Guidelines remain an essential tool in creating a fair and uniform sentencing regime across the country.

United States v. Ricks, 494 F.3d 394, 400 (3d Cir. 2007) (emphasis in original, internal citations and quotations omitted).

Therefore, the Supreme Court has held that "district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process" in order to assure fair, proportionate, and uniform sentencing of criminal offenders. Gall, 128 S. Ct. at 597, n.6.

In the present case, there are no other 3553(a) factors which militate against imposition of a sentence within that range; to the contrary, the 3553(a) factors on balance support the imposition of the recommended Guidelines punishment. It would be the epitome of unfairness to punish the defendant *less* severely than similarly situated offenders. The Guidelines accomplish the need to avoid unwarranted sentencing disparities; an outside-the-Guidelines sentence accomplishes the opposite. Therefore, in sum, all of the appropriate considerations of sentencing favor the imposition in this case of a within-Guidelines sentence.

VI. CONCLUSION

In sum, all of the appropriate considerations of sentencing favor the imposition in this case of a sentence at the high end of the advisory sentencing guidelines range, that is, 121 months imprisonment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum in this case was served by first-class mail and electronic case filing on:

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