

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA,	)	
	)	CRIMINAL NO.:
	)	
v.	)	VIOLATIONS:
	)	
	)	18 U.S.C. § 1349 -
	)	Wire Fraud Conspiracy
THOMAS LAVERY,	)	
	)	18 U.S.C. § 1343 -
	)	Wire Fraud
Defendant.	)	
	)	18 U.S.C. § 1956(h) -
	)	Money Laundering Conspiracy
	)	
	)	18 U.S.C. § 371, 21 U.S.C. §§ 331(t),
	)	333(b)(1)(D) and 353(e)(2)(A) -
	)	Conspiracy to Engage in Unlicensed
	)	Wholesale Distribution of Prescription
	)	Drugs
	)	
	)	18 U.S.C. § 1001 -
	)	False Statements
	)	
	)	

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this indictment:

General Allegations

1. The United States Food and Drug Administration [hereinafter "FDA"] was the agency of the United States responsible for, among other things, regulating the wholesale distribution of prescription drugs.

2. Serostim was an injectable drug manufactured by Serono, Inc., and approved by the FDA for the treatment of AIDS-wasting syndrome in HIV-infected patients.

3. Serostim was a prescription drug that could be safely used only under the professional supervision of a licensed practitioner.

4. Defendant THOMAS LAVERY was a wholesale distributor of Serostim operating out of Palm Springs, California. Defendant LAVERY sometimes conducted business under the name of "Las Palmas Marketing Group." Neither defendant LAVERY nor Las Palmas Marketing Group were licensed to engage in wholesale distribution of prescription drugs in California.

5. Unindicted co-conspirator #1 (hereinafter "UCC#1") resided in Milford, New Hampshire, and was licensed by the State of New Hampshire to engage in wholesale distribution of prescription drugs. UCC#1 conducted business under the name of "Alpine Pharma."

6. Unindicted co-conspirator #2 (hereinafter "UCC#2") was an attorney whose offices were located in Palm Springs, California. UCC#2 managed a client trust account for defendant LAVERY from those offices. UCC#2 acted as defendant LAVERY's partner in the wholesale distribution of Serostim. UCC #2 also was not licensed to engage in wholesale distribution of prescription drugs in California.

7. J.M. Blanco and Droguería Javiness, both located in Puerto Rico, were wholesale distributors of prescription drugs.

8. J.M. Blanco never sold any prescription drugs, including Serostim, to Droguería Javiness.

9. Droguería Javiness never bought or sold the prescription drug Serostim.

10. Medex Biopharm was a licensed wholesale distributor of prescription drugs based in Memphis, Tennessee.

11. Medical Center Pharmaceuticals was a licensed wholesale distributor of prescription drugs based in San Diego, California.

Wholesale Distribution of Prescription Drugs in the United States

12. U.S. drug manufacturers, such as Serono, Inc., generally distribute their prescription drugs to pharmacies, hospitals, and customers through licensed wholesale distributors.

13. A prescription drug is frequently bought and sold by numerous licensed wholesale distributors before being purchased by a pharmacy, hospital, or consumer.

14. Some wholesale distributors obtain drugs from questionable, and often unlicensed, sources who sell drugs at prices significantly below the average wholesale price of the drug. Those sources may have purchased stolen or expired drugs, or drugs that were previously dispensed and resold by the patient for whom the drug was prescribed. The drugs are then reintroduced into the wholesale distribution chain.

15. To prevent prescription drug diversion and the distribution of stolen, counterfeit, or substandard drugs, Congress enacted the Prescription Drug Marketing Act ("PDMA"). Among other things, the PDMA requires wholesale distributors of prescription drugs to be licensed by the state(s) in which they operate. Pursuant to the PDMA, FDA enacted minimum guidelines for state licensing of wholesale distributors of prescription drugs. These guidelines are designed to eliminate potential risks to the public health by protecting the integrity of the drug distribution system. The guidelines require review of the applicant's criminal history and impose minimum standards for record retention and the storage and handling of prescription drugs.

16. The PDMA also generally requires wholesale distributors of prescription drugs to provide to the recipient of the drugs a statement identifying each prior sale, purchase, or trade of the drug, including the date of each transaction and the names and addresses of all parties to the transaction. This statement is commonly referred to as a "pedigree." In the pharmaceutical industry, wholesale distributors use pedigrees to verify prior sales of the drugs as a means to prevent the distribution of drugs that are counterfeit, stolen, expired, obtained through fraud, or otherwise substandard.

17. Beginning in October 2002, Serono, Inc. implemented a "Secured Distribution Program" to manage the distribution of Serostim to patients. The program was intended to maintain the integrity of Serostim's distribution in the United States. Under this Secured Distribution Program, Serono, Inc., shipped Serostim directly to contracted network pharmacies that served as the exclusive distributors of Serostim in the United States.

COUNT ONE
Conspiracy to Commit Wire Fraud
18 U.S.C. § 1349

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.

19. Beginning in or about November 2002 and ending in or about June 2004, in the District of New Hampshire and elsewhere, defendant LAVERY and others known and unknown to the Grand Jury did knowingly and willfully combine, conspire, confederate, and agree to commit an offense against the United States, to wit: to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property from others by means of false and fraudulent pretenses, representations, and promises, and, for the purpose of executing the scheme and artifice, knowingly transmitting and causing to be transmitted by means of wire

communications in interstate commerce certain writings, signs, signals and sounds, in violation of Title 18, United States Code, Section 1343.

Objects of the Conspiracy

20. It was an object of the conspiracy to purchase Serostim from unlicensed sources and sell the Serostim at the highest price possible.

21. It was also an object of the conspiracy to prepare and distribute to customers false pedigrees and other documents concealing that the Serostim came from the aforementioned sources.

22. It was also an object of the conspiracy to prepare false shipping labels to conceal that the Serostim was shipped by defendant LAVERY.

Manner and Means of the Conspiracy

23. The following were among the manner and means used by defendant LAVERY and his unindicted co-conspirators to carry out the objects of the conspiracy and to ensure its success:

24. Defendant LAVERY would purchase large quantities of Serostim from various sources who were not licensed to engage in wholesale distribution of prescription drugs in California.

25. UCC#1 would arrange for the sale of the Serostim (purchased by defendant LAVERY) to licensed wholesale distributors of prescription drugs. UCC#1 would prepare sales invoices on Alpine Pharma letterhead and would fax or mail the sales invoices to the customers. The sales invoices would include the quantity of Serostim purchased, the price per unit, the total sales price, and information instructing the customer where to wire funds to pay for the Serostim.

26. After arranging each sale, UCC#1 would contact defendant LAVERY, who would then ship the Serostim via Federal Express from Palm Springs, California to the customer. To conceal his involvement in the handling and shipment of the product, defendant LAVERY would put the name and address of UCC#1 and/or Alpine Pharma as the shipper on the shipping label and would enclose a packing slip, prepared by UCC#1, bearing Alpine Pharma's name and address.

27. Defendant LAVERY would provide UCC#1 with false information that UCC#1 used to falsify pedigrees that UCC#1 prepared for the customers. UCC#1 would create and fax to the customer a pedigree that falsely represented that UCC#1 purchased the Serostim from Drogueria Javiness and that Drogueria Javiness purchased the Serostim from J.M. Blanco. Instead, the Serostim was acquired from unlicensed sources in California and was never purchased from the aforementioned sources in Puerto Rico.

28. UCC#1 would sometimes indicate on the pedigree faxed to a customer that the pedigree was "standing" for all of UCC#1's sales, meaning that the pedigree would remain the same for all of UCC#1's shipments of Serostim. After so informing the customer, UCC#1 would not always fax a pedigree for each shipment of Serostim to that customer.

29. The sales invoices prepared by UCC#1 initially instructed the customers to wire payment for the Serostim to the bank account of UCC#1, d/b/a Alpine Pharma, at the Bank of New Hampshire. Upon receipt of payment from customers, UCC#1 would wire the funds, less UCC#1's share of the profits, from UCC#1's account at the Bank of New Hampshire to the client trust account managed by UCC#2. Later, the sales invoices prepared by UCC#1 instructed the customer to wire payment for the Serostim to the client trust account managed by UCC#2 in

California.

30. UCC#2, upon receiving the wire transfers, would prepare checks made out to "cash" drawn from the client trust account, which was located at Washington Mutual Bank in Palm Springs, California. UCC#2 would endorse the checks and provide the checks to defendant LAVERY, who in turn would co-endorse the checks.

31. LAVERY would use the proceeds of the checks to purchase official bank checks from Washington Mutual Bank. The bank checks were made payable to the unlicensed sources of the Serostim. LAVERY would deliver the checks to the sources as payment for Serostim that defendant LAVERY had already received and shipped. On the occasions when the customer wired the funds directly to UCC#2, LAVERY also would purchase an official bank check made payable to UCC#1 and would send the check to UCC#1 as payment for UCC#1's participation in the transaction.

32. UCC#1 would prepare bogus purchase invoices for UCC#1's own files and record-keeping purposes. The bogus invoices were provided to UCC#2, but not to actual customers. The bogus purchase invoices falsely indicated that Alpine Pharma purchased Serostim from Droguería Javiness. The bogus purchase invoices correctly indicated the customers to whom the Serostim was shipped. UCC#1 gave copies of some of these bogus purchase invoices to the New Hampshire Board of Pharmacy following a routine inspection in June 2003, during which the state investigator asked UCC#1 to provide copies of records showing the receipt and shipment of Serostim by Alpine Pharma.

33. As a consequence of the conspiracy and fraudulent scheme and plan in which the defendant and his coconspirators engaged, the defendant and his co-conspirators induced payments by customers totaling at least \$1,009,460.

Overt Acts in Furtherance of the Conspiracy

34. In furtherance of the conspiracy, and to effect the objects and purposes thereof, defendant LAVERY committed and caused to be committed the following overt acts, among others, within the District of New Hampshire and elsewhere:

35. Between on or about November 11, 2002, and on or about June 10, 2004, defendant LAVERY shipped Serostim by Federal Express from Palm Springs, California, to Medex BioPharm, Inc., in Memphis, Tennessee and to Medical Center Pharmaceuticals in San Diego, California.

36. Between on or about November 11, 2002, and on or about October 6, 2003, UCC#1 faxed from Milford, New Hampshire to Medex BioPharm, Inc., in Memphis, Tennessee, and Medical Center Pharmaceuticals in San Diego, California, pedigrees that falsely represented that the Serostim was purchased from Droguería Javiness in Puerto Rico and that Droguería Javiness received the Serostim from J.M. Blanco in Puerto Rico.

37. Between on or about November 14, 2002, and on or about June 10, 2004, customers wired payment for the Serostim to UCC#1's bank account in New Hampshire or to the client trust account in Palm Springs, in accordance with instructions that UCC#1 provided on the sales invoices that UCC#1 sent to the customers.

38. The facts of each of the separate offenses charged in Counts Two through Thirty-Two are alleged to be separate overt acts undertaken in furtherance of the conspiracy and to accomplish the object of the conspiracy, and are incorporated by reference as if fully set forth herein as separate overt acts.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH THIRTY-TWO**Wire Fraud****18 U.S.C. §§ 1343 and 2**

39. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

40. On or about the dates set forth below, within the District of New Hampshire and elsewhere, defendant LAVERY, having devised and intending to devise a scheme and artifice to defraud and to obtain monies and property from others by means of false and fraudulent pretenses, representations, and promises, did, for the purpose of executing said scheme and artifice, knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, a writing, sign, and signal, as follows:

<u>COUNT</u>	<u>DATE</u>	<u>ITEM TRANMITTED</u>
2	11/11/2002	Pedigree faxed from Milford, New Hampshire by UCC #1 to Medical Center Pharmaceuticals in California
3	1/14/2003	Pedigree faxed from Milford, New Hampshire by UCC #1 to Medex BioPharm in Memphis, Tennessee
4	2/25/2003	Pedigree faxed from Milford, New Hampshire by UCC #1 to Medex BioPharm in Memphis, Tennessee
5	3/6/2003	Pedigree faxed from Milford, New Hampshire by UCC#1 to Medex BioPharm in Memphis, Tennessee
6	5/16/2003	Pedigree faxed from Milford, New Hampshire by UCC#1 to Medex BioPharm in Memphis, Tennessee
7	6/2/2003	Pedigree faxed from Milford, New Hampshire by UCC#1 to Medex BioPharm in Memphis, Tennessee
8	6/10/2003	Pedigree faxed from Milford, New Hampshire by UCC #1 to Medical Center Pharmaceuticals in California
9	8/5/2003	Pedigree faxed from Milford, New Hampshire by UCC#1 to Medex BioPharm in Memphis, Tennessee
10	10/6/2003	Pedigree faxed from Milford, New Hampshire by UCC#1 to

Medex BioPharm in Memphis, Tennessee

- | | | |
|----|------------|---|
| 11 | 11/14/2002 | Wire transfer of \$21,875 from Park Medical Pharmacy's account at Union LA Bank in California to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medical Center Pharmaceuticals |
| 12 | 1/16/2003 | Wire transfer of \$85,000 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 13 | 1/22/2003 | Wire transfer of \$106,250 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 14 | 2/11/2003 | Wire transfer of \$85,000 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 15 | 2/27/2003 | Wire transfer of \$85,000 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 16 | 3/10/2003 | Wire transfer of \$85,000 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 17 | 5/16/2003 | Wire transfer of \$41,250 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |
| 18 | 6/2/2003 | Wire transfer of \$21,250 from Park Medical Supply's account at Union LA Bank in California to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medical Center Pharmaceuticals. |
| 19 | 6/4/2003 | Wire transfer of \$47,372 from Medex Medical's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, \$42,500 of which constituted payment for Serostim shipped to Medex BioPharm |
| 20 | 6/18/2003 | Wire transfer of \$21,250 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm |

21	7/15/2003	Wire transfer of \$37,000 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
22	8/4/2003	Wire transfer of \$12,250 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
23	8/19/2003	Wire transfer of \$27,750 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
24	9/17/2003	Wire transfer of \$21,875 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
25	9/18/2003	Wire transfer of \$65,625 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
26	9/30/2003	Wire transfer of \$26,535 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
27	10/7/2003	Wire transfer of \$91,500 from Medex BioPharm's account at Trust One Bank in Tennessee to UCC#1's account at the Bank of New Hampshire, as payment for Serostim shipped to Medex BioPharm
28	12/18/2003	Wire transfer of \$17,875 from Medex BioPharm's account at Trust One Bank in Tennessee to the client trust account in California, as payment for Serostim shipped to Medex BioPharm
29	1/7/2004	Wire transfer of \$17,875 from Medex BioPharm's account at Trust One Bank in Tennessee to the client trust account in California, as payment for Serostim shipped to Medex BioPharm
30	5/6/2004	Wire transfer of \$22,875 from Medex Medical's account at Trust Mark National Bank in Tennessee to the client trust account in California, as payment for Serostim shipped to Medex BioPharm
31	6/8/2004	Wire transfer of \$15,555 from Medex Medical's account at Trust Mark National Bank in Tennessee to the client trust account in California, as payment for Serostim shipped to Medex BioPharm
32	6/10/2004	Wire transfer of \$11,895 from Medex Medical's account at Trust

Mark National Bank in Tennessee to the client trust account in California, as payment for Serostim shipped to Medex BioPharm

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT THIRTY-THREE
Conspiracy to Launder Monetary Instruments
18 U.S.C. § 1956(h)

41. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

42. Beginning in or about November 2002, and continuing until in or about June 2004, in the District of New Hampshire and elsewhere, the defendant LAVERY did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree with other persons, known and unknown to the Grand Jury, to commit certain offenses under Title 18, United States Code, Section 1956, to wit, conducting and attempting to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of specified unlawful activities, namely wire fraud in violation of Title 18, United States Code, Section 1343, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, with the intent to promote the carrying on of such specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

All in violation of Title 18, United States Code, Section 1956(h).

COUNT THIRTY-FOUR
Conspiracy to Engage in Unlicensed Wholesale Distribution of Prescription Drugs
18 U.S.C. § 371 and 21 U.S.C. §§ 331(f), 333(b)(1)(D), and 353(e)(2)(A)

43. Paragraphs 1 through 33 are realleged and incorporated herein by reference.

44. Beginning in or about November 2002 through in or about June 2004, in the District of New Hampshire and elsewhere, the defendant LAVERY and others known and unknown to the Grand Jury did knowingly and willfully combine, conspire, confederate, and

agree to commit an offense against the United States, to wit: to knowingly engage in the wholesale distribution in interstate commerce of prescription drugs in a state without being licensed by that state, in violation of Title 21, United States Code, Sections 331(t), 333(b)(1)(D), and 353(e)(2)(A).

Objects of the Conspiracy

45. It was an object of the conspiracy to purchase Serostim from unlicensed sources and to sell the Serostim at the highest price possible.

46. It was also an object of the conspiracy to prepare false and misleading documents and shipping labels to conceal that defendant LAVERY, who was not licensed to engage in the wholesale distribution of Serostim, shipped the Serostim and purchased the Serostim from unlicensed sources.

Manner and Means

47. The facts and conduct described in paragraphs 23 through 33 are incorporated by reference as if fully set forth herein and are among the manner and means used by defendant LAVERY and his unindicted co-conspirators to carry out the objects of the conspiracy its success.

Overt Acts in Furtherance of the Conspiracy

48. In furtherance of the conspiracy, and to effect the objects and purposes thereof, the defendant LAVERY committed and caused to be committed the following overt acts, among others, within the District of New Hampshire and elsewhere.

49. On or about the dates listed below, UCC#1 prepared misleading packing slips bearing Alpine Pharma's name and address and faxed the packing slips from Milford, New Hampshire, to UCC#2 in Palm Springs, California, for inclusion in the packages of Serostim to

be shipped by defendant LAVERY.

Dated faxed	Customer	Date Product Shipped
1/14/2003	Medex BioPharm	1/15/2003
2/5/2003	Medex BioPharm	2/8/2003
2/25/2003	Medex BioPharm	2/25/2003
6/16/2003	Medex BioPharm	6/17/2003
5/3/2004	Medex BioPharm	5/3/2004
5/19/2004	Medex BioPharm	5/22/2004

50. On or about the dates listed below, defendant LAVERY shipped Serostim to customers by Federal Express from Palm Springs, California. Each package bore a shipping label completed by or at the direction of defendant LAVERY that falsely represented that the package was mailed by UCC#1 from New Hampshire.

Date Shipped from California	Quantity Shipped	Recipient
1/15/2003	100 boxes	Medex BioPharm in Tennessee
1/20/2003	125 boxes	Medex BioPharm in Tennessee
2/8/2003	100 boxes	Medex BioPharm in Tennessee
2/25/2003	100 boxes	Medex BioPharm in Tennessee
3/6/2003	100 boxes	Medex BioPharm in Tennessee
5/15/2003	50 boxes	Medex BioPharm in Tennessee
5/29/2003	25 boxes	Medical Center Pharmaceuticals in California
9/27/2003	29 boxes	Medex BioPharm in Tennessee
12/11/2003	25 boxes	Medex BioPharm in Tennessee

12/31/2003	25 boxes	Medex BioPharm in Tennessee
2/4/2004	65 boxes	Medex BioPharm in Tennessee

All in violation of Title 18, United States Code, Section 371 and Title 21, United States Code, Sections 331(t), 333(b)(1)(D), and 353(e)(2)(A).

COUNTS THIRTY-FIVE THROUGH FORTY-FOUR
False Statements
18 U.S.C. §§ 1001 and 2

51. The allegations set forth in paragraphs 1 through 33 of this indictment are re-alleged and incorporated by reference as if fully set forth herein.

52. On or about the dates set forth below, in the District of New Hampshire and elsewhere, defendant LAVERY in a matter within the jurisdiction of the United States Food and Drug Administration, an agency within the executive branch of the United States, knowingly and willfully made and used a false document that the defendant knew contained materially false, fictitious, and fraudulent statements and entries, in that defendant LAVERY provided false information to UCC#1 who included the information on pedigrees that UCC#1 sent from New Hampshire to customers who purchased the Serostim. The information was intended to conceal the true source of the Serostim.

<u>COUNT</u>	<u>PEDIGREE DATE</u>	<u>DATE SENT</u>	<u>RECIPIENT</u>
35	11/11/2002	11/11/2002	Medical Center Pharmaceuticals
36	1/13/2003	1/14/2003	Medex Biopharm
37	2/12/2003	2/12/2003	Medex BioPharm
38	2/25/2003	2/25/2003	Medex BioPharm
39	2/25/2003	3/6/2003	Medex BioPharm
40	undated	5/16/2003	Medex BioPharm

41	5/29/2003	6/10/2003	Medical Center Pharmaceuticals
42	undated	6/2/2003	Medex BioPharm
43	undated	8/5/2003	Medex BioPharm
44	undated	10/6/2003	Medex BioPharm

Each count in violation of Title 18, United States Code, Sections 1001 and 2.

**NOTICE OF CRIMINAL FORFEITURE PURSUANT TO
18 U.S.C. § 982(a)(1)
(Money Laundering)**

1. Pursuant to Title 18, United States Code, Section 982(a)(1), a defendant who is convicted of the offense set forth in Count Thirty-Three shall forfeit to the United States the following property:

- a. All right, title, and interest in any and all property involved in each offense in violation of Title 18, United States Code, Section 1956, or conspiracy to commit such offense, for which the defendant is convicted, and all property traceable to such property, including the following: 1) \$17,550 in United States currency seized from the defendant on or about March 2, 2005; 2) all money or other property that was the subject of each transaction, transportation, transmission or transfer in violation of Section 1956; 3) all commissions, fees and other property constituting proceeds obtained as a result of those violations; and 4) all property used in any manner or part to commit or to facilitate the commission of those violations.
- b. A sum of money equal to the total amount of money involved in each offense, or conspiracy to commit such offense, for which the defendant is convicted. The amount of the money judgment sought is \$759,785. If more than one defendant is convicted of an offense, the defendants so convicted are jointly and severally liable for the amount involved in such offense.

2. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the value of the amount described in paragraph 1, if, by any act or omission of the defendant, the

property described in paragraph 1, or any portion thereof, cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

All in accordance with Title 18, United States Code, Section 982(a)(1), and Rule 32.2(a), Federal Rules of Criminal Procedure.

**NOTICE OF CRIMINAL FORFEITURE PURSUANT TO
18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)
(Wire Fraud)**

Upon conviction of one or more of the offenses alleged in Counts One through Thirty-Two of this Indictment, defendant LAVERY shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 18, United States Code, Section 2461(c) all property, real and personal, constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following:

1. Approximately \$17,550.00 in United States currency seized from the defendant on or about March 2, 2005;
2. A sum of money equal to \$1,009,460.00 in United States currency, representing the amount of proceeds obtained as a result of the offenses, violations of Title 18, United States Code, Sections 1343, 1349, and 2, Wire Fraud and Conspiracy to Commit Wire Fraud.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

All in accordance with Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Rule 32.2(a), Federal Rules of Criminal Procedure.

Dated: March 1, 2006

A TRUE BILL

/s/ Grand Jury Foreperson
Foreperson of the Grand Jury

THOMAS P. COLANTUONO
United States Attorney

By: /s/ Sarah E. Hawkins
Sarah E. Hawkins
Special Assistant United States Attorney

/s/ Mark A. Irish
Mark A. Irish
Assistant U.S. Attorney