Statement

of

Facts

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1. Janet Mavis Marcusse ("Marcusse") is a 57-year-old federal prisoner, who has been incarcerated at FCI Tallahassee since December 6, 2005.

2. Marcusse is one of 8 middle-aged to elderly defendants, which include David Albrecht, George Terrance Besser, Diane Boss, Wesley Boss, Donald Buffin, William Flynn, and Jeff Visser (See Exh. A), from a mail fraud prosecution in the Western District of Michigan in Case No. 1:04-cr-165 against Access Financial Group, Inc.

3. To raise the funding for an alternative health clinic, a provision in Michigan law, §§ 458.1 and 458.2, allow Roman Catholics to "take, hold and receive" funds and real estate for "charitable, religious, and literary purposes" (See Exh. B), was utilized by Marcusse, a cancer survivor, and George Besser, who was baptized in the Roman Catholic Church on 9/4/38 (See Exh. C), to engage in joint investment ventures with like-minded individual investors beginning in March, 1998, through Sanctuary Ministries, which was formed in 1997.

4. Marcusse emerged from personal Chapter 7 bankruptcy on 3/26/98 (Government Exhibit "GX" 56b).

5. The Trustee's Report, GX-56a, filed in the bankruptcy case on 1/12/98 showed "no assets".

6. According to IRS Agent Darline Goeman's assessment of tax liability for 1998, GX-148, Marcusse had income of $6,744, which Goeman concedes was not enough income to have been required to file an individual income tax return in 1998 or owe federal income tax (1:04-cr-165, R. 515, TR 2336-37).

7. Sanctuary Ministries was exempt from registration under 15 USC §80a-3(c), and its offerings exempt under §77c(a)(4).

8. A 10/99 investor newsletter included an attachment clarifying that all investment deposits were to be directed to Sanctuary Ministries (GX-33).

9. The office for Sanctuary Ministries was run by Marcusse in a home office at 228 Sweet Street, NE, Grand Rapids, Michigan 49503. Until 9/99, Marcusse made individual investment sales for Sanctuary Ministries through Access Financial Group and also ran Access in the home office.

10. Marcusse had incorporated Access Financial Group, Inc., in 1995, obtaining a Resident Agency insurance license for it from the State of Michigan Insurance Bureau on 1/17/96 (Id., R. 210, GX-2).

11. Independent sales associates began representing the private placements, including Diane and Wes Boss, Michael Brewer, and Jeff Visser through Access Financial Group, Inc.; Richard Muma through Access International, LLC; Tom Wilkinson through Access Global, LLC; and Donald Buffin through Access Business Consultants, LLC.

12. Individuals making referrals of potential investors included David Albrecht,

William Flynn, and Virgil Boss (no relation to Wesley or Diane Boss).

13. On 3/5/01, the Central Bank of the Bahamas revokes the license of Suisse Security Bank & Trust ("SSBT"), Nassau, Bahamas (See Exh. D), causing all funds to be frozen, which was where Marcusse had placed $4,226,000 in investor funds in a managed stock trading program, beginning on 10/21/98, named the "Bahamas 'CD' Trading Program" due to certificates of deposit having been utilized as collateral to leverage trades to provide higher returns than otherwise available, and to engage in Initial Public Offerings ("IPO's") in the Bahamas stock market (GX-33).

14. After the newsletter, Offshore Alert, published an article criticizing SSBT's "lack of due diligence in taking over the accounts of the crooked Antigua-based Accord Insurance", which was engaging in prime bank investment fraud, collapsing shortly thereafter (See Exh. E), on 2/11/00, Senior Supervisory Agent Gerard Forrester of the Miami Field Office of the FBI wrote a letter to Governor Julian Francis of the Central Bank of the Bahamas complaining about Offshore Alert, vouching for SSBT and its owner, Mohammed Harajchi, by advising he had searched the FBI files with negative results, that SSBT was one of the few banks in the Bahamas to "attempt to learn the proper procedures to curtail money laundering in their institution", and complaining, "It is terrible when a bank follows the laws of their country, a tabloid in the business of making money, writes an article such as was written and the bank can not defend itself" (See Exh. F, Request for Admission, Exh. A).

15. Unlike Accord Insurance, who was merely a customer of SSBT with a bank account, the "Bahamas 'CD' Trading Program" was being conducted inside the bank at a branch office location, with the Forrester endorsement letter used by bank management to lull Marcusse into a false sense of confidence sufficient to continue with it.

16. On 1/10/01, Agent Forrester writes a second endorsement letter to Governor Francis, again vouching for SSBT by advising it had not been the subject of any FBI investigation and had even helped the FBI in a criminal prosecution (See Exh. F, Request for Admission, Exh. B).[1]

17. On 3/6/01, the day after SSBT's license is revoked, David Cay Johnston reports under the headline, "I.R.S. Steps Up Tax-Evasion Raids", in the New York Times, that it was pursuing "suspected promoters of tax evasion schemes for affluent people", who "used foreign banks and trusts to help people hide their income and create false deductions", naming Global Prosperity and Anderson's Ark (Id., R. 422-4, p. 1).

18. The Central Bank of the Bahamas appoints Raymond Winder as Receiver of SSBT on 3/5/01 (Id., R. 422-3, p. 36).

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1 Cases include **United States v. Frederick Brandau**, Case No. 99-8125-cr-Hurley (SD, Fla.); **United States v. Brandau**, 46 Fed Appx 617 (CA11 2002); **In re Financial Federated Title & Trust, Inc.**, 273 B.R. 706 (Bankruptcy Ct., SD Fla. 2001).

19. In early 1999, sales associate Tom Wilkinson introduces Marcusse to several investors, including Dennis Vandenbergen, for whom she forms the "Valley Boyz Investment Club, LLC", opening a bank account at F & M Bank, Appleton, Wisconsin, with Vandenbergen and his associates raising approximately $500,000 and the balance to meet the $1 million investment minimum provided by Marcusse.

20. George Besser, as the director/signatory on the Valley Boyz account, signs a contract to participate in the "Isle of Man Program" on 4/13/99, transferring the $1 million on 4/14/99 to Midland Bank in England.

21. On or about 5/15/99, the United States seizes the funds as an illegal "Prime Bank Instrument Trading Program", which according to their Complaint for Forfeiture in Rem, is an investment program in which the funds are represented to be used as collateral to fund "trades" in a secret or little known market, usually in Europe, where "Prime Bank Instruments" are traded, except there is no profit because there is no market where such instruments are traded by private citizens anywhere in the world (See Exh. H, p. 4-5).

22. Per a "Settlement Stipulation", GX-380, entered into by George Besser, Claimant, and Reid Pixler, Ass't. U.S. Attorney ("AUSA"), Phoenix, Arizona, on behalf of the United States of America, on 5/15/00, after which $674,545 in funds were returned, Besser agreed that because he had now been advised of the existence of "Prime Bank Instrument Fraud", he would not be considered an "innocent" victim or owner as the result of participation in similar transactions in the future (See Exh. I).

23. Besser utilized the services of attorney Thomas Connelly, who also signed the Settlement Stipulation (See Exh. I), and had been recommended by the government.

24. As the result of the seizure of the Valley Boyz funds, Marcusse's investors were advised in a 6/99 newsletter that "all funds" would be placed in "new programs", and that the bank being utilized was "Suisse Security Bank & Trust in Nassau, Bahamas" (GX-31, ¶¶ 3, 7).

25. A 10/99 investor newsletter describes one "new program" that had been utilized "since late last year on a small scale", which is "not considered to be a standard bank debenture program", but "instead" is "a stock trading program that issues a certificate of deposit to back funds", with "SIPC Insurance", where the funds would be left to compound for a "profit pool", which would perform "based on movements in the market, either up or down", but not be distributed until "next October 15th", but upon which 3% monthly distributions would be made, as the 10% monthly interest was no longer available (GX-33). An attachment to the newsletter named the investment the "Bahamas 'CD' Trading Program" (Id., R. 422-2, p. 2-3)(See Exh. L).

26. After being provided with a copy of Agent Forrester's 2/10/00 endorsement letter of SSBT via email, Marcusse advises the investors in a 9/00 newsletter that, "We have

decided to allow our current contract to continue status quo until shortly after the first of the year. The profit pool, therefore, will not be available until late January or early February" (GX-38). The newsletter further advises, "We also will be closing our program to new investors shortly after the first of the year."

27. After receiving a copy of Agent Forrester's 1/10/01 endorsement letter of SSBT via email, a 1/31/01 newsletter advises that the "projected timing" of the profit pool "should be" by the "end of February, early March and payouts will occur over a several week timeframe" (GX-42).

28. A 4/01 newsletter advises investors Marcusse was unable to collect the profit pool due to a problem with the bank (GX-44), causing the 3% regular monthly distribution in March, 2001 to be the last one made.

29. An 8/01 newsletter advises investors Marcusse had "contacts" at Treasury and the FBI, who would "check the backgrounds of all principals" in the investment programs she used (GX-50).

30. Beginning on 11/16/00 (See Exh. M), investments were made in the preferred stock of MLC Development, Int'l, Inc. ("MLC"), Branson West, Missouri.

31. The principals of MLC were Michael Carney, Chairman, and Robert W. Plaster, Chief Financial Officer, who had entered into a joint venture project with the Lac Vieux Desert Bank of Lake Superior Chippewa Indian Tribe ("LVD"), Watersmeet, Michigan, through Richard Williams, Tribal Chairman, to develop the "Showcase Branson Project" (Id., R. 392-2, p. 1-2, 24-25)(See Exh. N).

32. The Showcase Branson Project was planned to be an amusement park, convention center, retail stores, restaurants, hotels, and more (See Exh. O), which would be located on property owned by Plaster that he agreed to sell for the Showcase venture, representing to Richard Williams he had "the connections to make our dreams come true as far as creating a reservation" (Id., R. 517, TR 2776)(See Exh. P).

33. As the property had 5 docks on water designated as international waterways abutting it, Carney and Plaster had plans that also included up to 5 riverboat gambling casinos (See Exh. Q).

34. An 8/3/99 Resolution, No. 99-036, by the LVD states that the Showcase project would not include any gaming enterprise "as long as Non-Native American developers do not develop gaming enterprise(s) in the Branson, Missouri area" (See Exh. R).

35. On 9/7/99, Richard Williams writes a letter to Larry Morin, Area Director, Bureau of Indian Affairs, to advise of the LVD's "intent to apply for and establish Reservation status on land located within Stone County, Missouri (Branson, MO area) composed of approximately 5,800 acres", further indicating it "is our intention, however, that if Missouri should pass laws that would allow for gaming at our Missouri location that the Tribe would retain the right to apply for a gaming license under

state law just as any other citizen or entity" (See Exh. S).

36. On 10/14/99, Larry Morin responds, advising the "property has to be held in trust status", including "a copy of a 1984 letter of instructions from the Deputy Assistant Secretary" (See Exh. T).

37. Local opposition to the Showcase project formed due to fears of gambling because the LVD operated the Island Casino in Michigan (See Exh. U,.V).

38. In a 6/12/99 article in The Branson News, Senator John Ashcroft issues the statement, "We will oppose any action by the federal government that would bring in gambling", with Chris Sifford, Chief of Staff for Gov. Mel Carnahan stating the "Governor's stance has traditionally been against gambling, other than what voters have already approved in the state, such as that on riverboats" (See Exh. W).

39. Michael Carney represented to Marcusse that a percentage of the gross from the riverboats would go to MLC as the leaseholder of the project for tremendous profits where Kansas City riverboats grossed $350 million, but Branson had between 8 and 12 million of visitors every year.

40. The Articles of Incorporation of MLC state under the Bylaws in Article I, the Executive Board of Directors consisted of 3 directors, including Plaster, who was the owner of 20,000 shares of Class A preferred stock, whose "seat shall be passed on exclusively to Robert W. Plaster's assigns for a period of fifty years, as he shall deem" (Def. Exh. M-FA, Art. I, Sect. 1, ¶¶ C, E)(See Exh. X).

41. Through 12/01, $2 million was invested on behalf of the investors with MLC, based on the involvement and representations of Robert Plaster, a successful businessman who had founded Empire Gas & Oil, sat on the board of numerous banks, was the Chairman of the Board of Evergreen Investments LLC, and a close friend of Senator John Ashcroft (See Exh. O, TR 2783; Exh. Y).

42. The MLC Showcase Branson Project was also the intended site of the alternative health clinic (See Exh. O), and the focal point of a 5/01 investor seminar (GX-58).

43. In a 1/01 newsletter describing the project, Marcusse advised investors she "intend[ed] to move on site within the next few months" (GX-41), which she also announced at the 5/01 investor seminar (GX-58, 58A).

43. Marcusse moves to Kimberling City, Missouri, right outside Branson West on 9/11/01, and the offices for Sanctuary Ministries and Access Financial Group are moved in 10/01 to Suite K, which was next to MLC's office in Suite E at 16282 MO-13 (Id., R. 145-2, p. 1).

44. Mike and Cheryl Brewer had already moved to Branson West in August, 2001, to enroll their son, Kenny, in school.

45. The office phone is in the name of Phoenix Foundation, the name given in the 3/01 newsletter, which informed them of plans for the alternative health clinic,

a medical research and development center, financial support for people with catastropic illness, and trips for sick kids (GX-43).

46. After $1.2 million was transferred to MLC through attorney Gurmail Sidhu, $1 million of which was then transferred to Plaster (Id., R. 157-2, p. 45)(See Exh. Z), Plaster issues a 1/3/02 letter on the letterhead of Evergreen Investments LLC, to the attention of Carney, Chairman of MLC, indicating MLC could "commence negotiating leases on the property" (Def. Exh. M-B)(See Exh. A-1).

47. Accordingly, Michael Carney issues a 1/3/02 "Unconditional Letter of Commitment" to the attention of William Flynn, on behalf of MLC, promising to pay "out of the proceeds of leases received by MLC the amount of four million US dollars ($4,000,000) as soon as the first lease proceeds are received by MLC. I estimate these lease proceeds to be received within 30 days from the date of this letter, but in no case later than February 14, 2002" (Id., R. 149, p. 18)(See B-1).

48. The $2 million in investments made in MLC resulted in a 50% preferred stock position in MLC and the $4 million note (Id., R. 519, TR 3207)(See Exh. C-1).

49. According to the "Financial Projections" from MLC for "Showcase Southpark", not including any riverboats, the leasing income to MLC was shown as $63,097,797 on the low side (50% tenancy) to $126,195,594 at full occupancy, with total gross income from all Areas at over $1 billion (Def. Exh. M-J; Id., R. 517, TR 2688-89)(See Exh. D-1).

50. The 1/24/00 Letter of Intent between MLC and the LVD indicates the cost of all financing for the land for the Showcase project would be reimbursed "through the development agreement" (Def. Exh. M-J)(See Exh. E-1).

51. The office manager for Tom Wilkinson, Dan Hammond, moves to Branson in 12/01, initially living in Carney's house, obtaining a "letter of interest" from Church Consulting, Inc., to finance the Showcase project in the amount of $98 million (Id., R. 517, TR 2670-72)(See Exh. F-1).

52. Church Consulting, Inc. was the organization to have funded the Bonaventure Adventure Park in California, according to Hammond (Id., R. 517, TR 2672)(Exh. F-1).

53. The financing from Church Consulting never went past the letter of interest stage because it was subject to Carney supplying some documentation he did not have (Id., R. 517, TR 2672)(See Exh. F-1).

54. Before the Church Consulting financing fell through, a Power of Attorney was given to MLC to collect the $25.5 million in proceeds due Crawford Ltd. for oil storage facilities in which $4,186,700 had been invested since 10/98, due to Plaster's political connections and background as the founder of Empire Gas & Oil, against which MLC agreed with a contract dated 7/11/02 to disburse $16,270,625.20 in proceeds to Marcusse's investors (Id., R. 345, p. 9)(See Exh. G-1).

55. While Marcusse is advised by Carney the wire transfer had occurred and was en-route to an account MLC had at Union Planters Bank, as shown by a fax from its Pointe Royale branch on 8/5/02, her investors were never paid as agreed (R. 194-17, p. 1) (See Exh. H-1).

56. On 10/29/02, Marcusse writes Carney and Plaster a letter, confirming an earlier conversation, advising them she would report them to law enforcement if they did not immediately pay the overdue $4 million on the 1/3/02 Note and the $16 million as agreed in the "Disbursal of Funds Sheet" signed by Carney and witnessed by Christi Heuck, Corporate Secretary.

57. In 10/02, Plaster hosts a dinner for John Ashcroft, who was now the U.S. Attorney General, at Empire Ranch, which was located on the property at Evergreen Investments on Table Rock Lake. As a Senator, Ashcroft and other politicians had regularly been the beneficiaries of fundraisers and hunting parties at Empire Ranch (1:09-cv-913, R. 34, Exh. WW)(See Exh. I-1).

58. Robert Plaster made regular and large contributions to members of the Republican Party, Missouri Republican State Committee, and National Republican Committee (Id., R. 34, Exh. WW)(See Exh. J-1).

59. On 11/8/02, 51-year-old Michael Carney dies, per a Missouri Certification of Death (1:09-cv-913, R. 34, Exh. GGG), and is immediately cremated.

60. On 11/15/02, Plaster writes Marcusse a letter, advising her that "it's time to set the record straight. Michael Carney is now deceased", advising her to contact Daniel Evans, MLC's corporate attorney, and averring, "You should also be aware that I am not now, nor have I ever been an officer, director, investor, shareholder or involved in any other way within MLC. Apparently you have been told to the contrary but if so, you have received bad information" (1:04-cr-165, R. 392-2, p. 3)(Exh. K-1).

61. Marcusse had met with Plaster and Carney together several times, both at the MLC office in Branson West and at the Evergreen Investments office in Lebanon, Missouri to discuss the MLC Showcase project and the collection of the Crawford contract.

62. On or about 2/14/02, Marcusse had a private meeting with Plaster at his office in Lebanon, Missouri, as shown by her bank records provided by IRS Special Agent Stephen Corcoran on 1/9/13 (Bates Stamp 9902)(See Exh. L-1).

63. In a headline article, the Branson News reports on 6/10/99 that, "MLC partners, Michael Carney, Robert W. Plaster and Glenn E. Merrit brought LVD representatives to Stone County to meet local officials and unveil project plans" (See Exh. V).

64. In a 2/15/00 letter to Missouri Gov. Mel Carnahan, Richard Williams, Tribal Chairman, had expressed the LVD's "intent to team up with MLC Development Int'l, Inc. (Mr. Michael Carney and Mr. Robert Plaster, principles)[sic] on the development of a theme park and convention center project in the Branson, MO area" (Id., R. 392-2,

p. 24)(See Exh. N).

65. On 7/22/99, in a fax from "Evergreen Investments", with the notation, "Mike from RWP" is a copy of an article in the Lebanon Daily Record from 7/13/99, entitled, "Showcase Branson jobs needed" (Def. Exh. M-J)(See Exh. M-1).

66. On 4/8/02, Michael Carney, Randy Scott, V.P. of MLC, and Marcusse travel to Washington, D.C. for the MAST meeting (Mid-American Sovereign Tribes), of which all 3 were a member, during which time, they visited with various Senators and other federal officials to secure their endorsement of a "bill to finalize the land trust status of the property constituting the Showcase Branson Project" (Id., R. 149, p. 29)(See Exh. N-1).

67. Richard Williams travels separately from Michigan to attend appointments with Carney, Scott and Marcusse, as set up by Robert Plaster with each politician, with Williams also "going to Ashcroft's office" (Id., R. 517, TR 2782)(See Exh. P).

68. Marcusse did not attend the meeting with Ashcroft, instead collecting the business cards of those legislators she did meet, including a 2002 calendar from Tom DeLay's office (Id., R. 519, TR 3121)(See Exh. O-1, P-1).

69. Prior to the 4/8/02 trip, Carney prepared a list of "MLC Employees & Associates' Data", which included 27 names, addresses and personal identifying information, such as Social Security Numbers, with Robert W. Plaster in the number 2 position (Id., R. 149, p. 26).

70. In the absence of his knowledge and permission, in light of the inclusion of Social Security Numbers for each individual, Plaster would not have been on this list, which was given to the the U.S. Department of the Interior, Office of the Special Trustee for American Indians, Tom Slonaker, Special Trustee (See Exh. P-1).

71. In 9/02, attorney Darwin Kal contacts Marcusse at investment advisor Richard Gerry's behest to indicate his interest in pursuing litigation against MLC, Evergreen Investments LLC, Plaster, and others, if the $4 million due from the 1/3/02 Note and the $16.3 million from the Crawford distribution was not forthcoming as promised (Id., R. 392-1, p. 9).

72. On 10/23/02, Marcusse sends a newsletter to investors advising them an "ultimatum" had been issued that "either we have this money in our possession within the next two weeks, or we proceed with litigation", referring to attorney Darwin Kal (GX-54).

73. On 2/7/01, Marcusse travels to Las Vegas, Nevada, to discuss investing with Richard Gerry, who recommended Winfield Moon, Worldwide E Capital, LLC.

74. Gerry used attorney James Kramer-Wilt, Dept. of Treasury, Bureau of Public Debt, a college friend, to do background checks on the principals of all potential investment funds.

75. A March 2002 United States Attorneys' Bulletin lists Jim Kramer-Wilt as the federal government's leading "expert" on prime bank investment fraud, having "compiled an extensive database on known and suspected prime bank scammers...he will have, or can get, some background information about your subject" (Id., R. 392-2, p. 11-12).

76. After Gerry provides Marcusse with a clear background check from Kramer-Wilt on both himself and Mr. Moon, she decides to invest with them as another diversification.

77. Albuquerque, New Mexico sales associate Mike Brewer advises Marcusse on 1/29/01 while in Michigan City, Indiana, that Diane Boss intended to purchase a $180,000 home for the Brewers out of Access Financial to move to Michigan as part of the sales group, causing Marcusse to become suspicious the Bosses had been embezzling funds in light of their prolific lifestyle.

78. The Bosses had been running Access Financial Group as a sales organization since 9/99, as announced at the time in a newsletter (GX-32), and again in a 12/99 newsletter when Diane DeWeerd married Wesley Boss (GX-34).

79. Diane Boss was made a signatory on Access Financial Group on 12/11/98 (GX-208).

80. Diane had been the sister of Marcusse's ex-husband, Bruce, who she married on 9/11/76, and remained friends with after the 4/29/88 divorce (1:09-cv-913, R. 34, Exh. A-1).

81. A sub-account is opened for Marcusse on 2/15/01 by Winfield Moon on the parent Worldwide E Capital LLC bank account at Wells Fargo Bank at the Maryland Parkway Office branch, in light of Marcusse's concerns about the Bosses and her continuing presence in Las Vegas with Moon and Gerry for business (GX-219a).

82. On 2/21/01, $100,000 is moved from the Access Financial Group account (GX-208) by George Besser, the other signatory, to Marcusse's personal account at National City Bank (GX-222), and the same day transferred to the Worldwide account in Las Vegas (GX-219). Likewise, another $700,000 is moved in February and March, 2001 to Marcusse's personal account and then immediately to the Worldwide account ($200,000 on 3/12 and $500,000 on 3/14/01), to keep the account balances in Grand Rapids, Michigan low to prevent any more stealing while Marcusse was out of town.

83. A total of $1,861,330 is invested with Moon and Gerry (GX-219/GX-203), including wire transfers made to the Worldwide account directly by investors.

84. In April, 2001, Marcusse asks Diane Boss out to Las Vegas, asking her if she had anything to tell her, where Diane makes no move to admit the stealing, causing Marcusse to ask Besser to remove Diane as a signatory and be replaced with sales associate Donald Buffin (GX-208).

85. Donald Buffin takes over Access Financial Group, its sales associates and staff,

moving that office from the Boss's home to a Grandville, Michigan location, except the Bosses keep the bank records, presumably to conceal the embezzlement (1:04-cr-165, R. 519, TR 3194).

86. Buffin obtains copies of checks written from Access Financial Group from National City Bank, determining there had been approximately $1.5 million embezzled by the Bosses (GX-97A-GG), which was accomplished by directing certain investors to deposit funds in Access Financial Group rather than Sanctuary Ministries (See ¶ 8, supra), allowing them to retain the funds.

87. In a 7/01 newsletter, it was advised the Bosses were no longer with the organization, more than $1 million was missing, and investors warned not to send them money (GX-48).

88. On 8/2/01, after Marcusse returns to Michigan, having been in Europe with Winfield Moon since 5/27/01, she files a criminal complaint with the Hudsonville Police Department against Wes and Diane Boss alleging a $1.5 million embezzlement, which is assigned to Det. Steve Crumb to investigate (Id., R. 309-3, p. 1)(See Exh. Q-1).

89. On 8/10/01, litigation is filed in the Ottawa County Circuit Court by Access Financial Group and Discovery Church against the Bosses through attorney James Sullivan, one of the investors, to recover funds and property stolen from investor funds, with first liens filed on their property (See Exh. R-1).

90. On 12/20/01, a search warrant is executed by FBI Special Agent Samuel Moore, CI Div. Special Agent James Flink of the IRS, and Det. Steve Crumb on the old Access Financial Group office in Grandville, Michigan.

91. The Grandville office was empty other than for a fax machine and a computer containing the records of Access Financial Group.

92. On 6/3/02, Sullivan advises Marcusse is a letter fax, "by their own admissions, they [the Bosses] are stating that they owe in excess of $200,000", following up on 6/6/02, indicating he was "trying to obtain a partial judgment".

93. On 7/12/02, the Office of U.S. Attorney in Grand Rapids, Michigan sends a questionnaire to investors.

94. After attempting to serve a subpoena on Marcusse for the grand jury through attorney James Sullivan, on 7/9/02 Sullivan sends a letter to AUSA Tom Gezon, stating "I have advised you orally and in writing our office does not represent her. I would ask that you direct Mr. Moore to discontinue contact with our office on this matter" (Id., R. 178, GX#30)(See Exh. S-1).

95. On 7/23/02, unaware of the subpoena due to having had problems with a new fax number available online rather than through a land line, a show cause hearing is conducted for which Marcusse had no notice and was not properly served, resulting in a 7/29/02 Warrant for Arrest, signed by Chief Judge Robert Bell, In re: Grand Jury

2002-1, Case 1:02-mc-78, the charge being contempt in violation of 28 USC §1826.

96. On 7/29/02, the government intervenes in the Boss civil litigation where attorney Richard Lobbes for the Bosses files a Motion to Adjourn Proceedings alleging Access Financial Group, Inc., and Discovery Church were "criminal enterprises established by Jan Marcusse for the purpose of defrauding investors" (¶ 3); the "Plaintiffs and their officers in this case are targets of a Federal Joint Task Force consisting of the FBI, IRS and Office of the United States Attorney" (¶ 5); for the past 9 months the Bosses had been "cooperating" with the FBI, IRS, and Ottawa County Sheriff's Department (¶ 6); that the Bosses had "entered into a tentative plea agreement to each plead guilty in the Federal District Court for the Western District of Michigan to criminal charges including fraud and tax evasion" (¶ 7); that they would testify in Marcusse's prosecution (¶ 7); and that as "part of their plea deal, the Plaintiffs [sic] will liquidate all their assets and turn the resulting funds over to the Federal Government for distribution, pro rata, to the Plaintiff's victims" (¶ 8)(See Exh. T-1).

97. In a Brief in Support of Defendants' Motion to Adjourn, it was averred that the "'investment' plan Jan was offering promised to pay returns of three percent (3%) per month on the investor's funds in 'Bank Debenture Trading Programs'", quoting from the prime bank debenture booklet offering 10% monthly interest (GX-1), which was the product from the Valley Boyz Investment Club that had been withdrawn, as advised in the 6/99 and 10/99 newsletters, replacing the prime bank debenture product with the stock trading program at SSBT making 3% monthly distributions (See Exh. U-1).

98. Marcusse abandons the Boss litigation, having no funds to continue to pay Sullivan, and relying upon the representation that the Boss assets would be liquidated and distributed to her investors.

99. As soon as the first liens are lifted, the Bosses cash out the equity in their assets to the maximum degree and do not plead guilty (Id., R. 501-1, p. 6)(Exh. V-1).

100. On 8/4/02, the Third Report of the Provisional Liquidator of SSBT, Raymond Winder of Deloitte & Touche, discloses there is $31,481,295 that needs to be "recovered", $17,717,067 of which was transferred out of the Court's jurisdiction to Switzerland by Michel Harajchi (Def. Exh. M-R)(See Exh. W-1).

101. For the first time since the 12/01 search warrant, which exposed the existence of the federal investigation, in disgust over the apparent lack of interest in those individuals and entities that obtained and kept investor funds, particularly where federal officials actively lent their names and the authority of their office as a sales tool, but were targeting Marcusse and her investors by extension instead, Marcusse sends a newsletter on 8/20/02 marked "Personal and Confidential, for private

use only, by participants only", alleging the investigators were not only not acting in the investors' best interests, but "lying" to them to fraudulently obtain the ability to subrogate their claims in order to defeat them; that the Bosses did not quit in 4/01 because they suspected fraud, but because of being removed as a signatory on the bank accounts; that Marcusse's directions had not been followed and her communications had been altered; and that everything had disclosed "best efforts" as "we obviously have no control over the performance side of a contract" (GX-53). Included was a 4-page attachment, "We Rest on the Law! Does the Government? Decide for Yourselves!", citing from the U.S. Constitution, Internal Revenue Code, Court Cases, and Definitions from Black's Law Dictionary, concluding, "To my knowledge, none of you were involved with illegal drugs, prostitution, or other criminal activities. I know we weren't" (GX-52). Also attached was a "Notice & Warning of a Criminal Conspiracy", listing the violations of federal law that had occurred in the investigation to date.

102. In an immediate reaction, the grand jury investigation is leaked to the Grand Rapids Press in a front-page article by Garrison Wells in which the Bosses are quoted as saying, "Marcusse urged them to spend the money on their house and cars to serve as a showcase for how prosperous Access Financial Group had made them" [emphasis added], repeating the allegations from the 7/29/02 Motion to Adjourn, concluding, "State and federal agencies are working hard to find out where the money has gone" (1:09-cv-913, R. 34, Exh. Y). Wells also quotes investor Sue Jager, who is "angry" it was "taking too long for the grand jury to issue indictments" (Id.).

103. On 8/28/02, Wes and Diane Boss send a letter to all of the investors, on behalf of local authorities, the U.S. Attorney's Office, FBI and IRS, averring Marcusse's program was "fraudulent", referring them to the 8/25/02 article in the Grand Rapids Press and urging them to respond to the questionnaire from the U.S. Attorney's Office previously sent to register their complaints against Marcusse, even including the number of their attorney Richard Lobbes (GX-71dd)(See Exh. X-1).

104. On 9/28/02, Garrison Wells writes another article for the Grand Rapids Press, "Investors get letter bashing inquiry: Authorities are investigating firm accused of losing millions of dollars belonging to more than 500 investors", quoting from Marcusse's 8/20/02 newsletter, and AUSA Gezon, who admits, "we are required by the rules not to comment", but he does so anyway, saying he's "very disturbed because [the newsletters are] not a good indication for their victims that their money has been well cared for" [emphasis added](1:09-cv-913, R. 34, Exh. Z).

105. On 10/23/02, Marcusse sends an "update" investor newsletter, advising of the "ultimatum" that had been issued for payment of funds due the investors (See ¶ 72, supra), or litigation would ensue, including against those government agencies that "have acted in a duplicitous and conspiratorial manner" (GX-54). She criticizes

the Grand Rapids Press for furthering "the government agenda" of "tainting" the jury pool and for "lying" to "cover up government corruption", and Garrison Wells in particular, who had "told potential interviewees that the U.S. Attorney's office had approved his contact of them" (GX-54). She includes a statement showing the amount believed due each investor, advising "1099's will be issued for all proceeds, as we will not be handling the redemption ourselves", referring to the 7/11/02 disbursal of funds contract with MLC against whom the ultimatum had issued (GX-54).

106. In March, 2002, after Winfield Moon's investments did not perform, Marcusse invites Richard Gerry to get involved in MLC, introducing him to Carney and Plaster. By the summer of 2002, Carney and Plaster offer Gerry the position of President of MLC (R. 392-1, p. 13-14).

107. Richard Gerry was a director/trustee on the bank accounts formed and administered by attorney Gurmail Sidu from which the MLC transfers were made.

108. On 11/6/02, Richard Gerry and Treasury attorney James Kramer-Wilt are indicted for Gerry allegedly providing an illegal financial gratuity of $25,000 to Kramer-Wilt in exchange for advice, in violation of 18 USC §§ 209 and 201, in Case Nos. 9:02-cr-44 and 42, respectively, in the Eastern District of Texas.

109. On 1/24/03, Gerry pleads guilty to the misdemeanor charge of 18 USC § 209, and on 5/15/03 is sentenced to 3 months of imprisonment.

110. On 1/30/03, James Kramer-Wilt pleads guilty to the misdemeanor charge of 18 USC §209, and on 5/15/03 is sentenced to 6 months of imprisonment. Kramer-Wilt is terminated from federal employment and has his law license revoked (Id., R. 392-2, p. 13).

111. After Gerry and Kramer-Wilt are indicted and plead guilty, attorney Darwin Kal loses interest in pursuing litigation against Plaster, et al (¶ 72, supra).

112. The first grand jury does <u>not</u> vote for a true bill, expiring on 8/29/03, causing the arrest warrant against Marcusse to expire (Id., R. 6)(See Exh. Y-1, ¶ 5).

113. In November, 2003, Dan Hammond, who had worked for Wilkinson, Access Global, LLC, from 3/98 to 12/01, was subpoenaed to the grand jury after he had moved to Missouri, but was told by an FBI agent after an investigation of Wilkinson's accounts, that only Rob Wilken, an individual with whom Wilkinson had also made investments, would be indicted (Id., R. 392-2, p. 20 from Hammond Affidavit).

114. Marcusse made no investments with Wilken.

115. In a 9/8/03 letter to attorney Richard Lobbes regarding the Bosses, AUSA Gezon avers, "I fully intend to ask the grand jury to indict Jan Marcusse and her trusted compatriots who helped her keep this scheme going..." (1:06-cv-694, R. 6-3).

116. George Besser sells the home he had built and owned for 16 years in Roseville, Michigan, near Detroit, in 1/03 to move to Mexico where his Social Security would go farther.

117. After Besser sells his home, he meets with representatives from the Social Security Administration at his daughter, Terri Magda's home, in Jonesville, Michigan, who explain the benefits to him (1:09-cv-913, R. 34, Exh. LLLL)(See Exh. Z-1).
118. George Besser files an FM-3 with the Mexican Government after he moves to Mexico, registering his presence, renewing and updating it with his new address.
119. On 7/9/03, sales associate Don Buffin files litigation against Marcusse and the Bosses in the Western District of Michigan where he avers that in 1/99, Marcusse approached him about a trading program paying "ten percent return on investment per month" (¶¶ 7-8); that "Marcusse regularly said that her goals were to fund an alternative hospital" (¶ 15); that in "October of 1999, Marcusse circulated a newsletter introducing a new CD (certificate of deposit) stock trading program" (¶ 34), a copy of which he attached as Exhibit A; that Buffin opened an office in May, 2001, signing a two-year lease in his name, which he has been unable to pay (¶¶ 44-51) (1:03-cv-00454-RAE, R. 1-1, **Buffin v. Marcusse, et al**).
120. The media reports U.S. Attorney General John Ashcroft makes several visits to Grand Rapids, Michigan in 2003 and 2004.
121. On 12/5/03, FBI Agent Moore submits a sworn Affidavit alleging, "Marcusse was operating a fraudulent scheme commonly referred to as a Ponzi scheme" (¶ 7), in support of his signed Criminal Complaint charging violations of 18 USC § 1341 and § 1956 (a)(1)(A)(i), which was signed by Magistrate Ellen Carmody (See Exh. A-2).
122. The Case Number assigned is 1:03-MJ-**666**.
123. Revelation 13:18 states, "Let anyone who has intelligence (penetration and insight enough) calculate the number of the beast, for it is a human number; [the number of a certain man]; his number is 666" (The Amplified Bible, p. 1161, published by Zondervans in Grand Rapids, Michigan).
124. There is no case number of 1:03-mj-665 or 1:03-mj-667 in the Western District of Michigan.
125. In his "Summary of Scheme", Agent Moore avers, "Marcusse represented that she had access to a secret financial opportunity involving what she referred to as 'International Prime Banks'", but quoting specific returns from the 10/99 investor newsletter describing the stock trading program at SSBT in GX-33 (¶ 8).
126. Agent Moore makes reference to "two written descriptions of the alleged Trading Programs, distributed by Marcusse to potential investors (Attachment A and B)" (¶ 9). Attachment A contains one page entitled the "Bahamas 'CD' Trading Program", which had been removed from the 10/99 investor newsletter, an intact copy of which is included as Attachment D. Attachment B contains the Prime Bank Debenture Note trading program paying 10% monthly interest.
127. Agent Moore further avers, "Approximately $6,000,000 was spent on purchases

and payments for the personal benefit of Marcusse and her friends or associates who helped her to operate Access Financial" (¶ 13); "Approximately $7,000,000 of the funds were returned to investors in the monthly checks described previously" (¶ 13); and the "balance of $7,000,000 has been traced to transfers to other accounts, many of which are located out of the country which cannot be traced any further" (¶ 14).

128. On 7/1/04, Marcusse is shocked to be arrested by FBI Special Agent J.R. Smith at home in Elkland, Missouri, where she lived with fiance Christopher Milson, whom she met in October, 2002.

129. Agent Smith refuses to produce an arrest warrant or complaint, but Marcusse offers no resistance to leaving with him (See Milson Affidavit, Exh. B-2).

130. On 7/2/04, a hearing is conducted in the Western District of Missouri wherein AUSA Douglas Bunch submits Agent Moore's Criminal Complaint as the probable cause to have her detained and removed to Michigan to which Marcusse states she wanted to preserve her right to a preliminary and a detention hearing in the Western District of Michigan (6:04-mj-2251, R. 1, 2, 4).

131. On 7/8/04, a Motion and Order to Unseal Case is filed by AUSA Gezon and U.S. Attorney Margaret Chiara, for Case No. 1:02-mc-78, In re Grand Jury 2002-1, in which the Hon. Robert Holmes Bell, Chief Judge, is shown presiding over it (See Exh. Y-1).

132. The Motion and Order to Unseal Case specifies the crime as a "ponzi scheme investment fraud" (See Exh. Y-1, ¶ 6, p. 2).

133. While the docket shows the Motion and Order to Unseal Case as having been signed by Magistrate Carmody (1:04-cr-165, R. 6)(See Exh. C-2), the actual Motion and Order is signed by AUSA Gezon and Judge Bell (See Exh. Y-1).

134. On 7/9/04, the Grand Rapids Press has the headline, "FBI nabs scam ringleader; The Grand Rapids-area woman -- on the run for two years -- is arrested in Missouri", in which Ed White reports the comments of AUSA Gezon and FBI Agent Moore. Gezon says, "Acting on a tip, FBI agents found Marcusse in a trailer deep in Missouri on July 1". Agent Moore says, "A criminal complaint unsealed Thursday in federal court in Grand Rapids described what happened to the money. About $7 million was returned to investors as monthly payments, and another $6 million was spent for the personal benefit of Marcusse and her allies", whereas the "balance, $7 million, was transferred to other accounts, 'many of which are located out of the country' and out of reach". Marcusse "did not place the funds in any safe financial institution as described in her literature...It was a Ponzi scheme, named for a famous Boston swindler of the 1920s, in which money from one investor is used to pay another" (See Exh. D-2).

135. On 7/11/04, it is reported by Jeannette Oldham, Sunday Mercury, under the headline, "Midland lawyer in mob probe", that Gurmail Sidhu's "home and office were raided

and documents and computers seized", under a "drug-trafficking" search warrant executed "late last year". Sidhu confirmed the "paperwork taken away related to one of his clients", naming the two companies for which he had been a director in which Marcusse's investor funds had been placed prior to being transferred to MLC (Exh. E-2).

136. On 7/21/04, Marcusse is transported by U.S. Marshals to Newaygo County Jail, White Cloud, Michigan, for her first appearance in the Western District of Michigan on 7/22/04 where AUSA Gezon appears, Agent Moore is present, and Magistrate Carmody advises Marcusse the charge is a "Ponzi scheme" wherein "much of this money was spent on personal things for yourself, and that also there was never any investments made as part of the scheme" [emphasis added], except when Marcusse is asked if she understands the charge, she states, "No...the reason being it is absolutely not possible for investigators to have done any sort of research and deemed this to be a Ponzi." Marcusse further objects, "the warrant for arrest is fraudulent, and I maintain the complaint is fraudulent and knowingly so. I believe it's full of perjury ...and it's provable perjury" (Id., R. 680, TR 2, 5-7). A preliminary/detention hearing is scheduled on Agent Moore's ponzi scheme charge. (See Exh. F-2).

137. Attorney Ray Kent is appointed as counsel to Marcusse.

138. On 7/24/04, Marcusse is attacked, slammed to the concrete floor, choked, and her life threatened by inmate Michelle McDaniels in Newaygo County Jail, accusing her of being a "constitutionalist", "snitch", and "white supremacist", but no medical attention provided, as recounted by eye witness Cheryl Gardner in a sworn affidavit (Id., R. 157, p. 23-27)(See Exh. G-2).

139. Cheryl Gardner, who was arrested for praying for peace in a peaceable assembly on National Forest lands without a permit (Exh. G-2, ¶ 38), which is a misdemeanor violation, was arrested for failing to appear at a hearing after AUSA Gezon, who was also her prosecutor, called her to advise the hearing date had been changed when this was not true. Gardner was transported to Oklahoma City where she met Marcusse, both of whom were being transported to the Western District of Michigan.

140. In her Affidavit, Gardner also recounts, "our lives had been threatened ever since we arrived in the cell several days earlier", including with "stab[bing] our eyes out with a pen" while we slept, and being "taken care of" by the men during a transport "because the guards were notified" and in on the plot (Exh. G-2, ¶¶24-27).

141. The arrest warrant executed on Marcusse showing an arrest date of 7/21/04 is not filed until 7/23/04 (Id., R. 9)(See Exh. C-2), but is not the one from Agent Moore's Complaint charging a "Ponzi scheme" in Case No. 1:03-mj-666 as shown on the docket (See Exh. A-2, C-2), but the 7/29/02 arrest warrant for civil contempt signed by Judge Bell and acknowledged by him as having "expired" (See Exh. H-2, Y-1, ¶ 5).

142. On 7/28/04, before the preliminary/detention hearing, when Marcusse meets

attorney Ray Kent and tells him about the 7/24/04 assault that she believed was incited by the U.S. Marshals that delivered her to jail, on behalf of AUSA's Gezon and Donald Davis, to intimidate her into pleading guilty, Kent is not shocked, nor does he agree to advocate on her behalf to see the responsible parties reprimanded and punished for this criminal activity.

143. At the 7/28/04 hearing, the first request Marcusse makes is to waive the right to counsel and proceed pro se (Id., R. 178, TR 4).

144. AUSA Gezon presents investor Richard Weaver to submit the prime bank debenture trading program as the investment he was presented by Donald Buffin in 8/99, to which Marcusse objects as irrelevant due to it having been withdrawn in 6/99, except Magistrate Carmody overrules her objection (Id., R. 178, TR 18-20).

145. Richard Weaver admits he told Buffin he wasn't interested in the debenture program, except Buffin calls him two days later at work about a stock program and foreign IPO's (Id., R. 178, TR 21, 25). This product was the Bahamas stock trading program at SSBT, as described in the 6/99 (GX-31) and 10/99 newsletters (GX-33).

146. Richard Weaver admits that because his deposit receipt didn't state the number of shares purchased, he assumed he was put in the prime bank debenture product instead, which was entered as Exhibit 2 (Id., R. 178, TR 25-26).

147. FBI Agent Samuel Moore testifies his investigation was initiated in March, 2001, but refuses to identify the "person" or "entity" contacting him. Moore avers the reason was because investors "were not getting their promised investment" payments (Id., R. 178, TR 97, 116-117).

148. According to the 7/29/04 indictment, regular monthly checks were still being paid in March, 2001, but stopped in April, 2001 (Id., R. 24, Ct. 40, ¶1(ii)(jj).

149. Agent Moore's investigation was "initiated" at the same time as the license was revoked at SSBT, causing Marcusse to be unable to pay investors.

150. Agent Moore testifies Marcusse was a "fugitive" on the 7/29/02 bench warrant issued from the 7/23/02 hearing, on a show cause order served on "her attorney James Sullivan", who Moore claims "said that he did forward that to her" by fax, except later Moore admits Sullivan lost contact with Marcusse until August at which time "he relayed information" (Id., R. 178, TR 102, 105, 110).

151. Agent Moore testifies Sullivan said "he would accept grand jury service for our purposes", but then Moore admits, "Right after I served the show cause order to him he submitted a letter saying that he did not want us contacting him any more regarding this matter and that he would not -- did not represent her" (Id., R. 178, TR 105, GX#30)(See Exh. S-1).

152. The service upon Marcusse of the subpoena through Sullivan was not valid where he was never hired to be her civil or criminal attorney, would have had a conflict

of interest as one of her investors, and made no representation he had served Marcusse in his 7/9/02 letter to AUSA Gezon (See Exh. S-1).

153. Agent Moore testifies Marcusse was never arrested on the contempt warrant, but "at a later time we had the criminal complaint which was sworn out and then that's what she was later picked up on" (Id., R. 178, TR 103).

154. Special Agent James Flink of the IRS submits GX#45, a one-page summary exhibited dated 7/17/04 showing the "Flow" of $20,868,075 of investor deposits to $8,395,054 in "Paybacks to investors", $4,977,234 in payments to "Subjects" for personal expenses, and $7,980,364 in payments to "other individuals and entities" (See Exh. I-2), to which Marcusse objects for being inaccurate but Magistrate Carmody admits over her objections (Id., R. 178, TR 131, 138).

155. Marcusse's voir dire included asking Agent Flink about his accusation no investments were made, to which he responds, "as far as any type of trading program or any type of debenture program we saw nothing going into that type of program", except when Marcusse questions him about the investors having been advised the Bahamas program was not a debenture program, Magistrate Carmody interrupts, admitting the exhibit for "illustrative purposes" (Id., R. 137-138).

156. Agent Flink's one-page summary exhibit, GX#45, shows figures that do not add up to $20,868,075, but $21,352,652 (See Exh. I-2), except where he never has to produce supporting details, such as dates, amounts, payees, it is of no moment.

157. Marcusse also objects to Agent Flink's one-page summary exhibit, GX#43 (See Exh. J-2), showing $20,686,075 in investor deposits into 19 accounts for its inaccuracy, which is admitted, subject to cross examination, continuing the hearing until 7/29/04 (Id., R. 178, TR 139).

158. Prior to court each day, Marcusse is provided a breakfast bag at Newaygo County Jail with food or drink that had been doctored with some kind of drug (Id., R. 157-3, p. 12), and on 7/29/04, placed by U.S. Marshals in a holding cell at the federal building with Michelle McDaniels, who had previously attacked and threatened her life (Id., R. 157-3, p. 10-11).

159. The drugging of Marcusse's food and drink was intended to cause her to go "crazy" in court, as established by the affidavit of Jennifer Hard, a prisoner who was held with Marcusse in the drunk tank during the trial. Once Marcusse suffered the effects of being drugged one time, realizing the source and intent, she stopped consuming the breakfast bag selected for her by Newaygo County Jail personnel before court. On 5/24/05, in an affidavit, Jennifer Hard states she ate the food contained in Marcusse's breakfast bag after she left, describing what happened afterwards as, "I went crazy, yelling and screaming, and in the process even breaking my eyeglasses and my toe kicking the wall. This was NOT at all normal behavior for me. I was

even put on suicide watch" (1:09-cv-913, R. 32-5, Exh. KK)(See Exh. K-2, Jennifer Hard Affidavit)(1:04-cr-165, R. 309-11, p. 5)(Milson 8/2/04 letter)(See Exh. L-2).

160. At the 7/29/04 hearing, IRS Agent Erica Boerman is present in court in the place of Agent Moore (Id., R. 179, TR 3).

161. When Marcusse asks about the "wide margin for error" in his charts, Agent Flink admits he did not "match" the investor list to deposits, blaming her for never being given the company records (Id., R. 179, TR 11-13).

162. At trial, FBI Agent Moore testifies when he executed the search warrant, it was "pretty fruitless as far as any significant evidence being turned out. The office had been pretty much vacant" (Id., R. 477, TR 1629)(See Exh. Q-2).

163. A 1/02/02 FBI Form 302 states that when the 12/20/01 search warrant was executed, "one Hewlett Packard" desktop computer was seized, in which the information would be retrieved "that has been stored on the CPU" (See Exh. R-2).

164. This FBI Form 302 was not provided in discovery, nor at trial for the testimony of Agents Flink, Moore or Det. Crumb, nor was it provided until 9/13/10 by David Hardy of the FBI, only after Marcusse had appealed to the Office of Information Policy ("OIP") to obtain them.

165. When Marcusse asks how much money he shows she obtained personally, Agent Flink states $900,000, out of which $600,000 was made out directly to her for "personal expenses", which were transferred to Worldwide E Capital, "another personal account that [she] opened." When asked if Worldwide E Capital was an investment, Agent Flink states it was a "bank account. I have no idea it went into any investment" (Id., R. 179, TR 15-16).

166. When asked about the $8 million ($7,980,364 in ¶ 154, supra), Agent Flink avers $1 million went to "other individuals", but didn't have "exact figures", and was unable to name even one of those individuals or a specific amount, claiming the rest of the money "went all over the world", but it wasn't "investments of the type of trading programs" promised, except he admits funds went to a bank account in the Bahamas (Id., R. 179, TR 16-18).

167. When asked by Marcusse, "So is it common practice to simply assume given the fact that such a tiny amount of the total went to me directly that I was doing no investment -- is that a normal assumption -- and that I was making no returns when it looks like a great deal of the money went into offshore accounts and other bank accounts and possibly could have had some returns?", to which Agent Flink responds, "I would say no" (Id., R. 179, TR 19-20).

168. When asked about MLC, Agent Flink states the records he had showed $160,000 going to it (Id., R. 179, TR 7). When asked if he was aware of $1 million going to Robert Plaster, that Plaster was one of the co-founders or co-partners of MLC, and

that Plaster was one of John Ashcroft's best friends, each time Agent Flink responds "No" (Id., R. 179, TR 21).

169. Agent Flink does admit he tracked $2.7 million to "foreign investments" (Id., R. 179, TR 22).

170. Agent Flink admits Diane and Wes Boss "took" $1.4 million (Id., R. 179, TR 32, 39), including $200,000 for landscaping, paid off a residence for $350,000, and gave money to relatives, including Diane's brother Bruce Marcusse.

171. A waiver of counsel by Marcusse is filed on 7/29/04 (Id., R. 18).

172. Where a reporter from the Grand Rapids Press or investors are present, U.S. Marshals "shadow" Marcusse whenever she moves, acting as if she is a dangerous serial killer by putting their hands up and around her within inches of her body, invading her space and denying any presumption of innocence (Id., R. 309-1, p. 8-9).

173. On 7/29/04, Ed White of the Grand Rapids Press reports under the headline, "Investor describes 'red flags' warning of alleged scam" that Marcusse "is charged with running a $20 million swindle".

174. On 8/4/04, at the hearing Marcusse was not permitted to present witnesses or evidence after she asked if it wasn't true that Agent Moore had committed perjury in his affidavit of 12/5/03 and Magistrate Carmody removed her, relying on AUSA Gezon's representations the crime was a "Ponzi investment scheme", finding Marcusse "has no remorse whatsoever, no recognition of her culpability in this matter", that she "refused to appear" at the show cause hearing, and attorney Ray Kent's representation Marcusse did not want to accept him as court-appointed counsel, sufficient "probable cause" as to the "fraudulent scheme" and deny bond (Id., R. 180, TR 5-8, 11-12).

175. On 8/5/04, Ed White of the Grand Rapids Press reports under the headline, "Rebellious scam figure sent step closer to trial", Magistrate Carmody complaining Marcusse "has no respect for the court, and no respect for the investors and no respect for anyone but herself"; that Marcusse was "accused of running a Ponzi scheme"; with AUSA Gezon being quoted, "Marcusse lulled more than 500 investors into believing that 'everything was going fine'", "[b]ut the purse actually was getting 'smaller and smaller'". A "former Steelcase worker" said, "checks stopped arriving, and a Marcusse associate told him there were problems with transactions from a bank in the Bahamas" (See Exh. S-2).

176. An Order of Detention Pending Trial states in a "Written Statement of Reasons for Detention" that the "government believes" there was an "extensive Ponzi scheme that forms the basis for this prosecution" in which "millions of dollars are unaccounted for and have been secreted in foreign banks" (Id., R. 193).

177. On 8/10/04, an indictment dated 7/29/04 is filed against Marcusse and 7 co-

defendants, George Besser, William Flynn, Diane Boss, Wesley Boss, Donald Buffin, Jeff Visser, and David Albrecht, in which 39 counts of mail fraud in violation of 18 USC §1341 (Cts. 1-39), and conspiracy to commit mail fraud (Ct. 40) are charged (Id., R. 24).

178. On 8/10/04, Ed White of the Grand Rapids Press reports under the headline, "Seven indicted in $20 million scam", which he calls a "Ponzi scam".

179. No trial date is set.

180. On 10/27/04, a superseding indictment is filed, including no new information, but broadening the scope by adding 43 counts, including the following where Marcusse is named, 15 "promotional" money laundering counts in violation of 18 USC §1956 (a)(1)(A)(i)(Cts. 43-57), which repeat the same transactions as the mail fraud counts; 2 "concealment" money laundering counts in violation of 18 USC §1956(a)(1)(B)(i)(Cts. 81-82); one "transactional" money laundering count in violation of 18 USC §1957 (Ct. 57); conspiracy to commit money laundering in violation of 18 USC §1956(a)(1)(A)(i), (B)(i), (h)(Ct. 41); conspiracy to defraud the United States in violation of 18 USC §371 (Ct. 42); and a $10 million forfeiture allegation based on having committed mail fraud in violation of 18 USC §1341, as alleged in Cts. 1-39 (Ct. 83)(Id.,R.108).

181. On 11/4/04, Judge Bell enters an Order setting pretrial and jury trial, scheduling the trial for 2/7/05 and ordering that any party intending to introduce Fed. R. Evid. 1006 summaries as evidence "must make available at or before the final pretrial conference copies of all such summaries and duplicates of the supporting documents summarized", advising further, "This court uses the Sixth Circuit's Pattern Criminal Jury Instructions (West Publishing)" (Id., R. 113).

182. On 11/9/04, where arrraignment on the superseding indictment is conducted, when Magistrate Carmody asks Marcusse if she had any questions about the charges against her, and as soon as Marcusse responds she was there by special limited appearnce, the nature and cause of this action is conspiracy, please receive and record into the court a criminal complaint regarding a "Protection Racket for Robert W. Plaster, John Ashcroft's friend, You Cheaters, You are framing me", during her statements, Marcusse is so violently attacked from behind by U.S. Marshal Steve Hetherington and an unknown associate, that a disk is herniated in her back, the leg on the heavy wooden table where she had been sitting is broken, she has bruises all over her arms, and she is bedridden for several days afterwards (Id., R. 309-9, p. 4-5, Transcript of tape, including noises of attack)(See Exh. T-2)(R. 194-15, p. 1, Lisa Ulrath affidavit)(See Exh. U-2)(R. 309-9, p. 3, Dawn Romanski affidavit) (See Exh. V-2)(R. 309-11, p. 3, Rebekah Kulawski affidavit)(See Exh. W-2)(R. 194-15, p. 2, Milson affidavit)(See Exh. X-2).

183. There are four independent affidavits attesting to excessive force having been

used against Marcusse, including her extensive bruising, herniated disk, and being bedridden for several days afterwards (See Exh. U-2, V-2, W-2, X-2).

184. Defense counsel Ray Kent just sits there silently in acquiesence while U.S. Marshal Hetherington and his associate abuse and injure Marcusse.

185. The tape and transcript made of the 11/9/04 arraignment shows Marcusse being removed before being asked how she would plead, except the docket falsely represents, "the deft stood Mute, a Not Guilty Plea was entered by the Court; deft declined to sign the Rights Form" (See Exh. C-2, p. 9, Minutes, R. 129)(See Exh. T-2, transcript)

186. At the hearing after Marcusse is removed, AUSA Gezon represents, "there is no additional Discovery of which we haven't made available to Ms. Marcusse before and being unrepresented she's not entitled to an initial Pretrial in the first place, we see no reason to have a initial Pretrial after the Superseding Indictment" (Id., R. 309-9, p. 5)(See Exh. T-2).

187. No article appears in the media about Marcusse's allegations of a "protection racket" being conducted to benefit Robert Plaster, a friend of the United States Attorney General John Ashcroft.

188. No article appears in the media about U.S. Marshal Steve Hetherington attacking Marcusse so violently as to injure her in order to silence her accusations.

189. AUSA Douglas Bunch, the prosecutor to have conducted Marcusse's initial appearance on 7/2/04 (See ¶ 130, supra), is named as the prosecutor in a press release issued by the U.S. Attorney of defendant Dennis Weaver, who pled guilty in Case No. 6:04-cr-3125 to a $20 million "illegal Ponzi scheme to defraud hundreds of investors" in an "investment scheme involving two Branson, MO., hotels" (1:09-cv-913, R. 34, Exh. ZZ)(See Exh. Y-2). The Press Release is dated 10/19/05.

190. There are 64 prosecutors in the Office of U.S. Attorney in the Western District of Missouri.

191. The Springfield News-Leader reports on 8/27/06 that the Branson Inn, which was among the assets seized by the SEC, was sold to Robert Plaster's son, Steve Plaster, to be used as the entrance to the Branson Landing project in which the Branson Inn was located on the site intended for their "$100 million high-rise resort" (1:09-cv-913, R. 34, Exh. ZZ)(See Exh. Z-2).

192. Evergreen Investments of Lebanon, and HCW Development Company, announced plans on 8/2/06 for a 25-story, 300 foot tall resort complex in Branson, which would include a "museum that will feature classic cars from personal collection of Bob Plaster, owner of Evergreen Investments" (See Exh. A-3).

193. The Showcase Branson Project included plans for the "Showcase Auto Collection" which was a "joint venture package with Robert W. Plaster" (See Exh. O, p. 2).

194. When several weeks go by without the court filing Marcusse's pleadings, as

left on the table in court on 11/9/04 at arraignment, where she is purportedly proceeding pro se, on 11/29/04, Marcusse submits a letter to Mr. Weston, Clerk, requesting her pleadings be filed as they had been "forcibly prevented from filing on 11-9-04", and that "further interference will result in a Sheriff delivering them for recording" (1:04-cr-165, R. 157-1, p. 1).[2]

195. On 11/30/04, Magistrate Carmody enters an Order for a competency exam for Marcusse where she "became visibly out of control and had to be restrained and removed by deputies from the United States Marshal Service", and an examination of her pleadings shows "she espouses theories that various government employees are acting unlawfully and are conspiring against her", but which would "be accepted for filing as a record of defendant's arguably irrational view of the charges against her" (R. 150).

196. The Complaint dated 11/3/04 objects to having been charged with the Bosses where Marcusse filed a police report against them on 8/2/01, filed civil litigation against them, the Dept. of Justice "fraudulently interferred" in the litigation, the Bosses were used to violate the grand jury secrecy rule by going to the Grand Rapids Press and by sending a solicitation letter to all of the investors (R. 144).

197. The Complaint dated 11/4/04 objects to AUSA Gezon and Agent Moore having lied to the court to obtain an arrest warrant at the show cause hearing on 7/23/02; Agent Moore withholding the evidence he received a fax from MLC on 6/4/02 containing Marcusse's work and home addresses and contact numbers in Missouri; and using the arrest warrant to slander and libel Marcusse with investors to interfere with her obligation of contract and invent guilty intent (R. 145).

198. The Complaint dated 11/5/04 objects to being physically assaulted on 7/24/04, threats being made against Jeff Visser, who was also detained at Newaygo County Jail, a "protection racket" being conducted for Robert Plaster to protect him from RICO litigation, tampering with Marcusse's mail, selective prosecution where sales associate Tom Wilkinson was not charged, prejudice against Marcusse's religious and political beliefs, fabricated evidence, perjury, outrageous government conduct, and that litigation requires "clean hands", which the government does not have in this case (Id., R. 146).

199. Before filing, all of the exhibits are removed from the 11/5/04 Complaint and filed separately at Dkt. No. 149 (See Exh. C-2, p. 10 of docket). Several exhibits from the 11/5/04 Complaint are entirely deleted, including a 1/15/04 letter to Dep. Attorney General James Comey from several public interest groups requesting a criminal investigation into alleged campaign financing violations, tax fraud, and money

2 This letter is not filed when received by the clerk. Instead, it is included under "Exhibit" to one of the pleadings presented for filing on 11/9/04, but not accepted for filing until an 11/30/04 Order (Id., R. 157-1, p. 1).

laundering by U.S. Attorney General John Ashcroft, with possible links to Robert Plaster in this criminal activity (See Exh. B-3); Projections of Income for the Showcase Branson Project (See Exh. D-1); Articles of Incorporation for MLC Development Int'l, Inc., showing Plaster having a 20% ownership (See Exh. X); and copies of the actual business cards of the various members of the House and Senate from the 4/8/02 meetings where Marcusse was present with Carney, Scott and Richard Williams lobbying for a bill for reservation status for the LVD (See Exh. P-1).

200. In other words, Magistrate Carmody and Clerk Ronald Weston removed the evidence to show that at the same time FBI Agent Moore and FBI Agent J.R. Smith in Missouri could not find Marcusse, she was in Washington, D.C., lobbying Congress for a bill, with one of her associates meeting with U.S. Attorney General John Ashcroft (See ¶ 67, supra).

201. That these exhibits from the 11/5/04 Complaint were removed and deleted can be established from Agent Moore's Form 302's received from David Hardy, FBI on 6/13/11, which contain all of the pleadings submitted on 11/9/04 intact, with Agent Moore initializing page 2 of the 11/5/04 Complaint as Record No. 196D-DE-90514-485, et seq., presumably having received his copies from the court.

202. Exhibits from the 11/5/04 Complaint filed at Dkt. No. 149 include a copy of GX#44, which was an "Organizational Chart" from the 7/28/04 detention hearing upon which Marcusse asks, "Where is Tom Wilkinson?" (See Exh. C-3).

203. The exhibit containing the affidavit of eye witness Cheryl Gardner to Marcusse's assault on 7/24/04 is tampered with to remove Pages 2-3 containing Paragraphs 12-37 where she reports Marcusse being called a "constitutionalist", "white supremacist", and "snitch", as the reason for the assault by McDaniels, and where the death threats are included (Id., R. 149, p. 34-35)(See Exh. D-3; Compare to intact copy in Exh. G-2).

204. Other exhibits removed from the 11/5/04 Complaint and filed at Dkt. No. 149 include a publication from the Joint Terrorism Task Force, of the FBI in Phoenix, Arizon, in which "domestic terrorists" are described as "'defenders' of US Constitution against federal government", "Christian Identity", "Nazis, Neo-Nazis", "Common Law Movement Proponents", who "make numerous references to US Constitution" (Id., R. 149, p. 44-45)(See Exh. E-3).

205. The exhibit containing the 6/10/99 article in the Branson News deletes three pages from the middle of the article, filing only the first and last pages (Id., R. 149, p. 27-28)(See Exh. F-3)(Compare to Exh. V).

206. A 10/24/04 Complaint objecting to violations of Fed. R. Crim. Proc. Rule 6 as to the grand jury having IRS Agent Flink present on 5/22/02, which "had to be necessarily intimidating to any and all grand jury members"; to the physical abuse

and assaults where court officials had a history of such misconduct, such as in the Modena case, No. 1:03-cr-607, also in front of Judge Bell, where the defendant alleged to have been "drugged, tortured, dieseled and railroaded"; to those individual investors who had been part of the Boss embezzlement being used to represent many of the 39 mail fraud counts against the other defendants (Id., R. 152)(See Exh. C-2, p. 11).

207. The exhibits to the 10/24/04 Complaint are removed and filed at Dkt. No. 157 on 12/10/04, over a month later on 12/10/04, with no link from the 10/24/04 Complaint, Dkt. No. 152 to Dkt. No. 157 (See Exh. C-2, p. 10-11).

208. Among the exhibits filed separately at Dkt. No. 157 is a letter from Pastor David Wygmans on 8/17/04 to Newaygo County Sheriff Mike Mercer for his response to the "serious" accusations made (Id., R. 157-3, p. 18)(See Exh. M-2), which had been made by Chris Milson in an 8/2/04 letter to the United Church of Christ in Newaygo, asking for help where Marcusse's phone calls to him were being "blocked", she had been "beaten" by another inmate who "threatened to kill her and her friend in their sleep", the water at the jail was "not fit to drink", and Marcusse had "seemed drugged and not in her normal state of mind" at a 7/28/04 court hearing (Id., R. 309-11, p. 5)(See Exh. L-2).

209. Another exhibit moved to Dkt. No. 157 is the 9/2/04 response from Roger Palmiter, Jail Administrator at Newaygo County Jail, who writes a letter to Milson, copying the U.S. Marshals and Paster Wygmans, averring Marcusse "cannot speak to you or anyone else on a cell phone", which was not true about anyone other than Milson, who had custody of her business records and other defense evidence. Palmiter states that at no time did Marcusse "request medical attention or complain of injuries", and there were no reports of "threats to do bodily harm or to kill anyone". Palmiter characterizes the accusation about "drugs and/or poison" as "almost too incomprehensible to respond to" (Id., R. 157-3, p. 14-15)(See Exh. N-2).

210. On 9/15/04, Cheryl Gardner writes a letter to Sheriff Mercer and Roger Palmiter, responding to the letter wrote to Milson, stating, "I am appalled by that letter. It contains statements that are completely false." She recounts the assault by McDaniels and includes the remarks that need correction, which included "no visible signs of an assault or injury", "[a]t no time did Janet request medical attention or complain of injuries", and "[a]t no time did anyone report there were threats to do bodily harm or to kill anyone" (Id., R. 149, p. 66-68)(See Exh. O-2).

211. On 9/20/04, Milson writes Roger Palmiter, a copy of which is moved to Dkt. No. 157, also responding with the facts to prove otherwise, even suggesting "random drug tests which [Marcusse] has consented to so that you can be positive of the situation [that she is not being drugged involuntarily]" (Id., R. 157-3, p. 16-17)(See

Exh. P-2). No testing is conducted.

212. A Complaint dated 11/8/04 objects that a Speedy Trial violation had occured as of 10/27/04; Marcusse's detention was unlawful where 18 USC §3142(f) had been disregarded as to the accused "shall be afforded an opportunity to testify and present witnesses; that because she had been assaulted for being a "constitutionalist", it was not an accusation that would ever originate with a prisoner, but had to have come from the U.S. Marshals who delivered her to the jail or prosecutors contacting Newaygo County Jail staff to plant it, and were individuals who had a history of similar activity; and the fact that another prisoner, Mandy Hite, to whom Marcusse gave her breakfast bag one morning before court to confirm the suspicion attempts to drug her were being made, resulted in Hite describing it as being "looped" (Id., R. 148).

213. One exhibit removed from the 11/5/04 Complaint was a picture of the ancient trailer under which the declaration of Chris Milson dated 10/5/04 states this was where "Jan Marcusse and I lived" for over a year; that "Jan did receive mail here however she did not need to receive much mail as the land, home and bills were in my name"; and that out of his fear for her life being in danger, "I advised her that no one, including her friends, would know where she lived" (Id., R. 149, p. 4)(See Exh. G-3).

214. Not only had death threats been incited by investors being falsely advised by AUSA's Gezon and Davis, FBI Agent Moore, and IRS Agent Flink that Marcusse had stolen all their money, but the timing of Mike Carney's death and quick disposal of his body was most suspicious in its convenience to Robert Plaster's best interests.

215. When Carney had been alive, he warned Marcusse it was not safe to ever go against Plaster. It had also been confirmed from attorney Darwin Kal and other locals to Missouri that Plaster had a frightful business reputation, including having started his career as an IRS agent and progressed to firebombing his competition when operating Empire Gas & Oil, even being criminally charged in the 1970's by the U.S. Dept. of Justice twice, once of "hiring two men to use a 10-stick dynamite bomb to blow up a competitor's tank truck", and another where Empire was accused of using "predatory practices, threatening competitors and price-fixing to acquire monopoly control of the propane market", but was acquitted, having had the benefit of top-notch legal talent, F. Lee Bailey (See Exh. H-3).

216. No investigation of any of Marcusse's complaints, affidavits, or evidence is ever conducted by Newaygo County Jail, FBI Agent Moore, or Judge Bell's court. No censure of the governmental misconduct, physical abuse and assaults, mail tampering, denial of access to the jail law library, incited assault, or death threats ever issues from Judge Bell or his magistrates, including after notice.

217. A review of the public record of the Western District of Michigan of cases in which Judge Bell is the presiding judge, between 1993 and 2005, show 8 cases involving issues of defendant competency, 13 cases charging conspiracy to defraud the United States, in which 6 of the 8 cases involving competency were females charged with conspiracy to defraud the United States, all of which were later found to be competent (1:09-cv-913, R. 32-5, Exh. PP)(See Exh. I-5), exposing a bias against a woman with this charge.

218. Attorney David Kaczor was appointed to a defendant in 4 of the 13 conspiracy to defraud the United States prosecutions and one involving a female defendant whose competency was questioned but later found to be competent (See Exh. I-3).

219. After being transported to MCC Chicago on 12/10/04 for the competency exam, at the advice of Chicago attorney Philip Corboy, Marcusse refuses to participate in it. Corboy advises Marcusse that if her case had been in Chicago, he would have considered taking on her defense pro bono.

220. On 12/22/04, the trial is rescheduled by Judge Bell to 4/18/05 and the final pretrial to 3/25/05 (Id., R. 165).

221. The question of Marcusse's competency is fed to the Grand Rapids Press and to WOOD 8 TV under the headlines of "alleged Ponzi scheme" and "$20 million swindle" (See Exh. J-3, K-3).

222. As soon as Marcusse is transported to MCC Chicago, attorney Ray Kent files a motion to withdraw for being appointed the Head of the Office of Public Defender, which is granted by Judge Bell (Id., R. 159, 160, 161). Attorney David Kaczor, who is in private practice, is appointed in Kent's stead on 12/17/04 (Id., R. 163).

223. On 2/23/05, in support of a finding of competency, AUSA Gezon submits evidence showing Marcusse's Form U-4 Status Report showing her 5 securities licenses being placed with Raike Financial on 9/3/97 (GX-1); life insurance license with the State of Michigan (GX-2); Resident agency life and health insurance license for Access Financial Group, Inc., on 1/17/96 with the State of Michigan (GX-2); verified Application for Employment to Comerica Bank on 3/6/96 showing a B.S. degree from Detroit College with a 3.96 GPA (GX-3)(Id., R. 210). Marcusse presents no evidence or testimony. Magistrate Carmody finds Marcusse competent to stand trial (Id., R. 211).

224. On 2/25/05, Magistrate Carmody denies Marcusse's pleading to disqualify Kaczor as counsel (Id., R. 213).

225. Based on other prisoner's experiences, including those recorded in "The Criminal Defendant's Bible" by Michael H. Brown, which exposed prosecutors, Kaczor and U.S. Marshals collaborating in similar dirty tactics against the accused to sabotage his defense, as well as a review of the public record from 12/19/91 forward by Chris Milson revealing Kaczor had never won a case before Judge Bell (1:09-cv-913, R. 34,

Exh. C-1), Marcusse did not trust him, causing her to file a petition for writ of mandamus to remove him as a "prosecutorial tool" (1:04-cr-165, R. 200).

226. After learning of the articles in the press about her competency, Marcusse writes a letter to the legal department of the Grand Rapids Press advising them that if they can't report her side of the story as well, instead of only the lies of AUSA's Gezon and Davis, then she will sue them for libel. No reporter ever contacts her for an interview, nor does the Grand Rapids Press cease reporting the false accusations of the government.

227. On 3/5/05, in response to the 2/28/05 murders of Judge Lefkow's mother and husband in Chicago, Judge Bell is quoted in a Grand Rapids Press article by John Agar and Ed White as having "presided over more than 100 cases of a volatile group -- tax rebels, whose refusal to pay often is mixed with anti-government scorn", claiming, "It all started with these tax protesters..They're angry with everyone and everything" (1:09-cv-913, R. 32-4, p. 1-2)(See Exh. L-3).

228. The 3/5/05 Grand Rapids Press article reports that the only instance of a judge being killed was in 1989 where "Grand Rapids District Court Judge Carol Irons was shot by her estranged husband, off-duty policeman Clarence Ratliff" (Exh. L-3).

229. Initially, on 3/1/05, it had been reported law enforcement suspected a member of Matthew Hale's group was responsible for the Lefkow murders where Hale was convicted on 4/26/04 of solicitation to commit the murder of Judge Lefkow and sentencing was scheduled to be 4/6/05 (Id., R. 32-4, p. 3)(See Exh. M-3).

230. Matthew Hale was the leader of the World Church of the Creator, a violent white supremacist group, who was sentenced to 40 years for soliciting an undercover FBI informant to kill Judge Lefkow (See N-3, O-3).

231. On 3/10/05, it was reported by CBS that Bart Ross, a disgruntled litigant after Judge Lefkow dismissed his civil rights lawsuit for medical malpractice over disfiguring treatment for cancer, left a suicide note admitting to the murders (1:09-cv-913, R. 32-4, p. 4)(See Exh. P-3).

232. Judge Bell's publicly expressed belief, however bizarre to the average American, which in effect links the criminal activity of one white supremacist group to label all tax protesters as violent, reflects a script being employed to employ false presumptions against Marcusse to deny all due process and invent the means to impose a draconian sentence, and exposing his approval of her 7/24/04 assault.

233. The FBI "Joint Terrorism Task Force" listing the red flags of a "domestic terrorist" (See Exh. E-3); New York Times Reporter David Cay Johnston's book, Perfectly Legal, who suggests that "[t]hose who challenge imprisoning people for tax debts under the 13th Amendment secretly support 'white racist' organizations" (Id., R. 34, Exh. W)(See Exh. Q-3)(See ¶ 17, supra); and an obsolete IRS publication,

"Illegal Tax Protester Information Book--Document 7072 (1-86)", which was withdrawn on 8/15/86, link "white supremacists", "tax protesters", "constitutionalists" and "political dissenters" under the broad umbrella of a "domestic terrorist".

234. The script for Marcusse's trial is further derived from a July 2001 United States Attorneys' Bulletin article entitled, "Recycled 'Redemption': The Latest Illegal Tax Protester Scheme", p. 25-29, in which "fictitious financial instrument schemes" are utilized by "anti-government groups", who engage in "harassment" against government officials and "commit economic terrorism against government agencies, private businesses and individuals" (See Exh. R-3). The fictitious financial instruments used the article include "sight drafts" and UCC-1 filings.

235. In a 3/17/05 Opinion, Judge Bell denies George Besser the right to proceed pro se at trial because Besser "began asserting an apparent argument based upon the Uniform Commercial Code" at a 3/14/05 continuance hearing (1:04-cr-165, R. 156).

236. Nowhere in the 24-page transcript for the 3/14/05 hearing does Besser assert an argument about the Uniform Commercial Code (Id., R. 268).

237. The 3/26/04 article about David Cay Johnston's book mentions the "Silence Advocacy Project" revealed in the prosecution of former IRS CI Division Special Agent Joe Banister (See Exh. Q-3).

238. Banister, who was an enrolled agent and CPA, reports the Silence Advocacy Project, which is administered by the Director of Practice, is used as "a secret police force to monitor and punish political advocacy" through a "secret law enforcement tribunal which can label someone a 'fraud'" and "set them up for other charges without ANY access to due process of law", with the IRS ignoring what laws it wants (See Exh. S-3)(Note the inclusion of Banister's blog is not to be considered the adoption of his position, but the exposure of the "Silence Advocacy Project" only).

239. A review of 31 USC § 330, Practice before the Department, states the Secretary of the Treasury may (a)(1) regulate the practice of representatives of persons before the Department of Treasury; and under (2) may require the representative demonstrate (A) good character; (B) good reputation; (C) necessary qualification to enable the representative to provide to persons valuable service; and (D) competency to advise and assist persons in presenting their cases. Subsection (c) states that after notice and opportunity for a proceeding, the Secretary may -- (2) bar such appraiser from presenting evidence or testimony in any such proceeding (See Exh. T-3).

240. Agent Moore's Affidavit to his 12/5/03 Criminal Complaint attests in Paragraph 16, "Marcusse has worked as a tax advisor/preparer" (Id., R. 2, p. 3).

241. Out of an alleged 577 investors and 78 government trial witnesses, AUSA's Gezon and Schipper present only <u>one</u> investor witness, John Beemer, who testifies Marcusse did his taxes in 1998. After Beemer responds "yes" to whether Marcusse

prepared that year's tax returns, AUSA Gezon asks, "did she advise you that you needed to report these monthly payments, these interest payments on your return?", to which Beemer responds "no" (Id., R. 461, TR 346-47).

242. AUSA Gezon's evidence, GX-61a, a "Summary of Investments" for Beemer, shows no amounts received by him in tax year 1998 to report.

243. Although listed as a pro se litigant on the docket (See Exh. C-2), Marcusse was not permitted to cross examine 25 out of the government's 26 investor witnesses, including John Beemer. The 8 court-appointed defense attorneys did not question Beemer about this fallacy in the government's accusations.

244. In his closing arguments at trial, AUSA Gezon invents character defects for Marcusse, such as she's a "dishonest and immoral sales person"; "she's a con"; to know her "is to want to run from her"; her "credibility" is "zero"; she's an "illegal sales person"; "How long do you think it would take you to be in a relationship, a business relationship with this woman before you realized what she was?"; and even, for investors who met her for the first time, it "made their skin crawl" (Id., R. 521, TR 3538, 3558; R. 522, TR 3738, 3757, 3772)(See also Exh. A).

245. The video of the May, 2001 investor seminar shows investors giving Marcusse a standing ovation at the end (GX-58, 58A).

246. In a 2/8/13 Declaration by Special Agent Stephen Corcoran of the IRS, which is filed on 2/11/13 in response to Marcusse's FOIA lawsuit in the District of Columbia, Corcoran admits there are 99,838 pages of documents or 54 boxes that "have not been provided nor made available to the plaintiff [Marcusse] or any of her co-defendants during the Grand Jury investigation, the criminal trial, or this instant litigation" (1:12-cv-1025, D.D.C., R. 25-9, p. 7)(See Exh. V-3).

247. In his 88-page Declaration of 2/8/13, in regards to every box and all 99,838 pages of documents, Agent Corcoran admits, "the records did not substantially support or advance the legal theory of the government's case at the time of that prosecution" (Id., R. 9, et seq)(See Exh. V-3).

248. Agent Corcoran admits that 2,140 pages of documents pertaining to "plaintiff's tax preparation business" from "tax years 1994-1999" were withheld for this reason--that they did not support the government's theory (Id., p. 36)(See Exh. V-3).

249. AUSA Gezon represented to Marcusse to have an "open file" discovery policy.

250. Marcusse is threatened on 4/18/05 that, if she does not plead guilty, AUSA Donald Davis, Jr., will classify her as a "domestic terrorist" (See Exh. W-3).

251. A "political crime" is defined as, "In general, any crime directly against the government; e.g., treason; sedition. It includes any violent political disturbance without reference to a specific crime." Black's Law Dictionary (6th Ed., p. 803).

252. On 3/14/05, Magistrate Carmody enters an Opinion regarding the competency

hearing in which the basis for the exam order is amended to describe it as Marcusse's "violent outburst at her arraignment" [emphasis added], finding the "outburst at her arraignment was either aberrational or within her control" (1:04-cr-165, R. 241). The only violence perpetrated at arraignment was by U.S. Marshal Steve Hetherington and his associate attacking Marcusse so viciously she was injured (See ¶ 182, supra).

253. AUSA Davis appeared to have the power to designate or classify a criminal defendant as a terrorist for exercising the right to a jury trial if led by a woman.

254. In the prior "tax scam" prosecution of 12 defendants for writing worthless "sight drafts", AUSA Davis is quoted as calling it "domestic terrorism" in spite of admitting "no weapons were involved" in articles by Ed White in the Grand Rapids Press on 5/15/02 and 5/22/02 (See Exh. X-3, Y-3).

255. In the 5/22/02 article, Judge Bell is quoted saying about defendant Phillip Hammond, he "has great bitterness and hatred for government and anyone in authority", calling him a "'threat to the stability' of the country", and telling him, "If you wish to emigrate to Iraq or to Cuba, perhaps you'll be happier in those places than you are here in the United States (See Exh. Y-3).

256. The 5/15/02 article reports the defendants "regularly skipped trial, deciding to sit in a cell a floor above Bell's courtroom. They rarely talked to their court-appointed lawyers" (See Exh. X-3).

257. In the 5/22/02 article, defense attorney Anthony Valentine says his client, Art Modderman, "believes society is governed by the Uniform Commercial Code". AUSA Davis says about him, "He's a dangerous man" (See Exh. Y-3).

258. In May, 2004, Virgil Boss (See ¶ 12, supra), is arrested for failure to appear on a subpoena to the grand jury that is not served on him until after the time he was required to appear. Boss is held in Newaygo County Jail for three weeks until he is brought to the grand jury. Boss had been a friend of Marcusse's for a long time and was an individual she trusted. Boss was a friend of Gerald TerMeer, who in turn was a friend with David Paul Rendleman.

259. Whereas referral associate David Albrecht is charged with Marcusse in the 7/29/04 indictment, Virgil Boss is not charged.

260. After Marcusse's arrest on 7/1/04, the only individual she could call was Virgil Boss, as the phone at Newaygo County Jail would not process collect calls with her other contacts, such as Chris Milson (See ¶ 208, supra).

261. Virgil Boss urges Marcusse to contact Rendleman, who purportedly had experience with the federal court and Judge Bell in Grand Rapids, having been charged on 12/18/03 for mail fraud and conspiracy to defraud the United States in Case No. 1:03-cr-294-RHB.

262. Marcusse's collect calls to Rendleman are also processed, who insists she ask for a common law court, the magistrate's oath of office, and assert the pretrial hearing is a "political question", which a federal court cannot adjudicate and the theory being would cause her release. Correspondingly, Rendleman provides Marcusse with a writ of mandamus to submit to the court (Id., R. 178, TR 5; R. 19).

263. After the hearings, when Marcusse advises Boss she believed she had been drugged and could no longer consume what was given to her before court, he threatens that he would no longer accept her calls if she did not follow Rendleman's instructions to demand the writ be read into the record and heard by the court, for she only had one more chance to "get it right", as otherwise she would lose all oportunity for pretrial release given how she had been "set up".

264. At the time, Marcusse's dearly beloved father was terminally ill, and she was desperate to obtain pretrial release.

265. The process demanded by Boss and Rendleman insured Marcusse would not be able to present any evidence to rebut the charges or defective service of the July 2002 subpoena, providing Magistrate Carmody with the means to remove Marcusse from the courtroom for "outbursts", deny the rights to present witnesses and testify, as well as deny pretrial release (Id., R. 180, TR 4-5).

266. On 8/5/04, Ed White reports in the Grand Rapids Press, "Marcusse, 47, twice was hauled away Wednesday after several outbursts challenging the judge" (Exh. S-2).

267. The title of White's article, "Rebellious scam figure sent step closer to trial" (Exh. S-2), further served the purpose of labeling Marcusse as in rebellion or insurrection (See 18 USC §2383 under Treason, Subversive activities).

268. In 10/04, when Rendleman and Boss accuse Chris Milson of being a "spy" for his skepticism over their tactics and effectiveness, where Rendleman now insists the only way for Marcusse to win at trial is to remain silent while letting <u>him</u> conduct her defense, she suspects she has been set up by Boss to sabotage her defense in collaboration with Agent Moore in exchange for an immunity deal. Marcusse makes no more calls to Rendleman.

269. In FBI Form 302's not provided until 6/13/11 by David Hardy, FBI, under FOIA, Agent Moore reports that during 9/27 to 10/18/04, Rendleman, who "reliability is considered somewhat credible", was cooperating to help locate Jeff Visser and George Besser for arrest on a "Ponzi" scheme (See Exh. Z-3).

270. A review of Rendleman's criminal case docket, No. 1:03-cr-294-RHB, shows on 1/15/04, notice of "Insanity Defense by David Paul Rendleman" was entered at Dkt. No. 32.

271. After Mike Carney dies and Plaster disavows all involvement in MLC in 11/02, Jeff Visser, his wife Beth, and two teenage daughters, move to Florida to live with

his brother, Ron Visser, in Zephryhills, Florida, where the girls were enrolled in the public school system.

272. Both Cornelius Visser, Jeff's father, and Ron Visser, were large investors with publicly available addresses. Their contact information was contained in the business records on the hard drive of the computer seized by Agent Moore in the execution of his search warrant on 12/20/01, which was submitted into evidence at trial as GX-81.

273. In an interview on 10/4/04 with Cornelius Visser, Agent Moore reports he knew his son was aware he was going to be arrested, and promised to advise Jeff to contact the agency so that a date and time could be arranged for his surrender (Exh. A-4).

274. On 10/6/04, Agent Moore reports Jeff Visser is arrested at the Grandview Motel, Tampa Florida (See Exh. B-4).

275. Agent Moore reports that, according to Rendleman, he contacted Jeff Visser and had him go to the Gardenview Motel for a Colonel from the Virginia Militia to place him in their "underground railroad", which was the "same militia group" that was "gearing up for the declaration of martial law". Rendleman explained that "the anti-government types ranging from the site [sic] draft writers and the tax protesters to the fraud schemers and the anti-government militia groups are all looking to cause and see the collapse of the United States government and its related systems, such as the court and banking systems. According to Rendleman, they are looking to cause overloads with their numerous court filings, Uniform Commercial code (UCC) filings on law enforcement and government officials, investment fraud and site [sic] draft schemes and any other way they can overload the system using the bureaucracy against itself" (See Exh. Z-3, p. 2).

276. None of the defendants in Marcusse's case, who were all middle-aged to elderly, were ever members of a militia, associated with a militia, nor were any of them Nazi's, neo-Nazi's, white supremacists, or sight draft writers, and there was no legitimate evidence to make such allegations, labels, or profiling, other than in the mind of Rendleman, who according to his case "was diagnosed in the 1990's with paranoid schizophrenia" (1:04-cr-265, R. 23, p. 12).

277. Agent Moore's 9/27/04 Form 302 also states Rendleman provided him with George Besser's address in Mexico (See Exh. Z-3). Agent Moore falsely represents "Besser left the Roseville area of Michigan when he learned of his indictment", labeling him a "fugitive" (See Exh. C-4, p. 2; Z-3, , p. 2).

278. On 6/1/05 at trial, AUSA Gezon presents Gail McGuire as a witness, who testifies she and her husband bought Besser's home in Roseville in January of 2003, who told them "he was heading south" (1:04-cr-165, R. 513, TR 2152). The initial indictment was dated 7/29/04 (Id., R. 24).

279. Agent Moore had no need for Rendleman to locate Besser. According to Margarita Hall, Besser's girlfriend and with whom he was residing in Mexico, the FBI went to Guadalajara to pick up Besser's FM-3 containing his address, which was being renewed, and "kept" the papers so the evidence Besser was lawfully present in Mexico could be made inaccessible (See Exh. D-4).

280. George Besser's daughter, Terri Magda, who has lived at the same address for 26 years, and is the address Besser used for his Social Security payments, states that "at no time was I ever contacted by any government official regarding the whereabouts of my father, George T. Besser" (See Exh. Z-1)(See ¶ 117, supra).

281. George Besser's arrest paperwork shows the charge is "conspiracy to distribute five kilograms or more of cocaine" (1:09-cv-913, R. 32-5, Exh. VV)(See Exh. E-4).

282. At trial, Agent Moore admits, "Mexico usually does not extradite for white-collar crimes" (1:04-cr-165, R. 477, TR 1685).

283. After Besser is denied bond and lodged at Newaygo County Jail, the rumors were spread by Harold Bonnell, jail trustee at the behest of a guard, that Besser was a "baby molester", presumably to incite assaults and death threats (Id., R. 146, p. 6; R. 545-1, p. 3)(See Exh. F-4).

284. In spite of no prior history of it, charged or uncharged, to the present time in the federal prison system since his arrest, Besser, who is now 76 years old, has had his safety jeopardized and been subject to harassment by guards and thereby other prisoners, based on this bogus child molester label or classification, which has been raised as a claim in civil rights litigation he filed on 3/11/15 at the U.S. District Court in the Eastern District of Kentucky, Northern Division, in Case No. 0:15-13-HRW.

285. As Besser's claim also arises under PREA ("Prison Rape Elimination Act"), the Dept. of Justice, Office of Inspector General, has forwarded a copy of the complaint to the Bureau of Prisons, Office of Internal Affairs (See Exh. G-4).

286. Besser's litigation further raises claims of deliberate indifference and cruel and unusual punishment where approved medical treatment has been denied and medication withheld to cause pain, damage his heart, and impair his memory.

287. In regards to Donald Buffin, Agent Moore uses Rendleman to provide Buffin with pleadings to file after Marcusse's arrest, which are then used by AUSA's Gezon and Schipper with witness IRS Agent Flink to submit as Exhibits 161-165 as "rebuttal" evidence at trial in response to Buffin's defense he had "no guilty knowledge of this operation and that he was acting in some kind of good faith", as "evidence that in fact he was filing frivolous obstructionist pleadings with the grand jury is admissible and any pleadings he files later" (Id., R. 520, TR 3385-92, GX-161 through GX-165 filed from 8/27/04 through 5/11/05).

288. The exhibit admitted as GX-162 is Buffin's pleading entitled, "Act of State, Political Petition for Redress of Grievances--Expressed Administrative Hearing--Notice of Final Political Default--Constitutional (International) and Mandatory Administrative Damages"(Id., R. 85-2), which is filed on 8/27/04, and is the identical document to that filed on 6/21/04 by Rendleman in his own criminal case, No. 1:03-cr-294, in front of Judge Bell, at Dkt. No. 54.

289. On 7/27/04, Judge Bell files an "Order to Seal" the psychiatric evaluation report of Rendleman in the same case at Dkt. No. 55.

290. As the last mail fraud count of 39 is dated 3/23/02 and the last overt act in the indictment is dated 10/23/02 (Ct. 40, ¶ 2(u)), which is the newsletter objecting to "lying" by federal officials in the grand jury investigation (See ¶ 105, supra), yet before Buffin files the first of these pleadings on 8/27/04, the initial indictment dated 7/29/04 charges the scheme to defraud was "continuing to the time of the Indictment" (Id., R. 24, ¶ 10), signifying the knowledge Rendleman was being used to insure Buffin would be filing such pleadings to enable the use of 2004 sentencing guidelines significantly increasing the sentences not otherwise available and allowing for the filing of the 10/27/04 superseding indictment broadening the scope of the charges, but based on no other new information not previously available.

291. At the 3/14/05 continuance hearing, Judge Bell tells the 8 defendants they should listen to their "seasoned" lawyers: "Don't be headstrong and bullheaded and say I'm going to do this my way. There is no your way" (Id., R. 268, TR 17-18).

292. A review of the public record shows that, similar to attorney David Kaczor, none of these attorneys ever win a case in front of Judge Bell (1:09-cv-913, R. 34, Exh. C-1)(See ¶ 225, supra).

293. Of the 8 defendants, only those who requested to proceed pro se were denied bond--Marcusse, Besser, and Visser.

294. When Don Buffin files a "Notice" named as assertion of the right to unobstructed self-defense on 5/10/05 (1:04-cr-165, R. 330), a Motion and Order to seal motion for bond revocation is signed by Judge Bell on 5/11/05 (Id., R. 334, 335).

295. Buffin is held in the drunk tank at Newaygo County Jail without shower or shave until after the second day of trial, 5/17/05, when a hearing is conducted by Judge Bell in which bond is reinstated on the condition Buffin agrees to accept attorney Ken DeBoer, a "classy guy" Bell had known 33 years, as full counsel (Id., R. 309, TR 12, 14).

296. On 4/25/05, AUSA's Gezon and Schipper file a motion in limine to request a court order prohibiting Marcusse from submitting evidence on the "statutes, codes, judicial decisions, or legal opinions", including any "tax experts" upon which she relied; and that "the persons engaged in the investigation and prosecution of this

matter have engaged in several crimes including...fraud", or that "attack the... activities of the grand jury" (Id., R. 277).

297. While Judge Bell reserves ruling on whether the defendants can submit exhibits regarding the "documents" upon which they relied and that they are entitled to a **Cheek** defense wherein the "defendant may testify regarding his own good-faith belief",[3] such as "wages are not income", he grants the rest of the government's 18 demands (Id., R. 338).

298. On 4/28/05, at AUSA Gezon and Schipper's request (Id., R. 275-1)(See Exh. H-4), Judge Bell grants a "protective" order on the Jencks and **Brady** materials against the pro se defendants only, all of whom are being held in Newaygo County Jail, in which even the government's trial exhibits must be returned at the close of the presentation of evidence because "further copying or dissemination could endanger government witnesses, chill future sources of information, and constitute unwarranted disclosure of grand jury and government information" (Id., R. 288).

299. Under the signature of AUSA's Gezon, Schipper, and U.S. Attorney Chiara, it is represented that all witness FBI Form 302's and IRS Memorandum of Interview "MOI's" would be provided, even though not subject to disclosure (Id., R. 275-1) (See Exh. H-4), except none of the relevant 302's are provided regarding Agent Moore's utilization of Rendleman to impeach his testimony as to Besser and Visser being set up to portrary as fugitives to presume guilt; to providing Buffin with the pleadings used to portray him as having guilty knowledge or intent; to the classifications of the defendants as "tax protesters", "anti-government", associated with the "militia", anarchists, and fictitious instruments schemers; or the document proving a computer was seized in the 12/20/01 search (¶¶ 162-63, supra), which allows for the false representation Marcusse hid or destroyed records when faced with a grand jury subpoena, later made a finding on direct appeal when her pro se appellant brief was not considered.[4]

300. It is not until Marcusse appeals the denial of all FBI Form 302's by David Hardy and the Office of Information Policy remands to Hardy to provide the documents that on 6/13/11 are these Rendleman 302's provided, which is after Judge Bell denies Marcusse the right to file amended or supplemental pleadings in her §2255 on 3/8/11, including even a new innocence claim under **Skilling** (1:09-cv-913, R. 29, 35).[5]

3 **Cheek v. United States**, 498 US 192 (1991). Only allowing a **Cheek** defense denies Marcusse her intended defense, which was the monies IRS Agents Flink and Goeman alleged to be "income" were not income, but investments made on behalf of the investors under contract. An unlawful definition of "investments" was used in this case to limit it to only the prime bank debenture product in GX-1, disregarding all other investments as "spending".

4 A headnote in **United States v. Flynn**, 265 Fed Appx 434 (CA6 2008), falsely represents, "With regard to mail fraud, evidence the defendant ordered destruction of files after learning of the federal investigation supports finding of and participation in conspiracy to defraud."

301. In spite of filing FOIA litigation against the IRS, no MOI's have ever been provided (1:12-cv-1025, D.D.C., R. 1, Ground 14, ¶¶ 173-176, p. 42).
302. On 5/4/05, the Government's Trial Brief is filed under the signatures of AUSA Gezon, Schipper, and U.S. Attorney Chiara, representing Marcusse "devised and operated a scheme to defraud and to obtain money from over 500 investor-victims by means of false and fraudulent pretenses, representations and promises. This scheme was a classic Ponzi scheme". Similar to the indictment, the product described combined characteristics from the prime bank debenture product and the Bahamas stock trading program, quoting its returns only (1:04-cr-165, R. 297, p. 4). It was represented that $8.6 million was paid back to the investor-victims and "the remaining $12.1 million was spent by the Defendants" (Id., R. 297, p. 5). It was represented the defendants told investor-victims "that payments received were not taxable because Access Financial Group was a tax exempt church organization" (Id., R. 297, p. 6).
303. In the Trial Brief, the "Elements of the Offense" for 18 USC §1341, Mail Fraud, state "counts allege one common scheme" with diferent mailings (Id., R. 297, p. 12). Under the element of "Intent to Defraud", it states, "the Sixth Circuit is very clear when it comes to Ponzi schemes and proof of intent to defraud. Since 1966, *the court has found that the question of intent to defraud in a Ponzi scheme* 'is not debatable'...and intent to defraud can be inferred as a matter of law from the mere fact that a Defendant is running a Ponzi scheme" [emphasis added](Id., R. 297, p. 46-47). A "Ponzi scheme" is used to describe the charge 9 times in the Trial Brief (Id., R. 297, p. 4, 9, 18, 28, 47).
304. On 5/5/05, after obtaining the permission of Judge Bell (Id., R. 651, TR 25), Marcusse files a motion for pretrial release, arguing she was falsely deemed a "flight risk" where there was no proof of legitimate service (Id., R. 307). Attached to the Motion is a Memorandum in Support, which is removed and filed separately on the docket (Id., R. 309), behind the minutes for the pretrial conference (Id., R. 308).
305. Previously, Marcusse was unable to have properly filed a Notice of Void Order dated 8/4/04, referring to the Order of Detention, in which she objects, "I have been physically assaulted every time I have attempted to assert any Constitutional Rights in this Court; indeed I now can't even finish a sentence in this court without getting beat up" (Id., R. 207, p. 4).
306. The first time the Notice of Void Order is submitted, Magistrate Carmody enters an Order Rejecting Pleading on 12/15/04 (Id., R. 162)(See Exh. C-2), which is after Marcusse is shipped to MCC Chicago. She resubmits the pleading on 2/7/05 after being transported back to Newaygo County Jail on 2/7/05 (Id., R. 194), except

5 **Skilling v. United States**, 130 S Ct 2896 (2010).

this time it is filed without some of its exhibits, causing it to be resubmitted a third time on 2/23/05 (Id., R. 207), but it still is not correctly filed (Exh. I-4).

307. The Memorandum in Support to the Motion for Pretrial Release contains numerous exhibits. It argues for pretrial release because Marcusse's defense is being impeded and Fifth and Eighth Amendments violated where she "has had to contend with threats on her life 'coincidentally' around the same time as her court dates, tampering with her mail, the phone, commissary funds, legal files", and "druggings". She charges this activity constitutes a history and "pattern of abuse" in which federal authorities, disloyal court-appointed attorneys, and Newaygo County Jail employees collaborate together, dating back to at least 1998, to "torture" pretrial detainees and sabotage their defense, as shown in "The Criminal Defendant's Bible", if the right to a jury trial is exercised (See ¶ 225, supra)(See Exh. J-4).

308. After removing the Memorandum in Support from the Motion for Pretrial Release and filing the brief separately, Judge Bell denies the Motion by referring to Dkt. No. 307 only (Id., R. 325).

309. In the Memorandum in Support, Marcusse alleges that for any judge to oversee "the vicious assault in open court on 11-09-04" conducted "in response to Claimant's lawful attempt to file a Criminal Complaint as required of Claimant under 18 U.S.C. Section 4", misprision of a felony, places Magistrate Carmody in the position of "willing accessory to assault", and for that reason alone, she should be released (Id., R. 309-1, p. 13).

310. On 5/5/05, at the final pretrial conference, Judge Bell orders an anonymous jury "due to no fault of anybody here" (Id., R. 651, TR 4).

311. Judge Bell further orders the government to take pictures of every witness and of each defendant (Id., R. 651, TR 9).

312. Marcusse objects it would be "prejudicial to be in jail clothes and have your picture taken", to which Judge Bell states to the Deputy Marshal, "I don't want a mugshot", who promises to "work something out" (Id., R. 651, TR 37-38).

313. No pictures of the defendants are taken. Instead, 10 days into the trial, IRS summary exhibits prominently displaying a large mug shot of each defendant on each of their exhibits entitled, "Investors' Funds Received and Spent by Defendant..." are submitted into evidence by Agent Flink and AUSA Gezon (GX-89, Albrecht; GX-90, Besser; GX-91, D. Boss; GX-92, W. Boss; GX-93, Buffin; GX-94, Flynn; GX-95, Marcusse; GX-96, Visser; R. 477, TR 1737, 1740, 1744, 1748-49, 1756; R. 478, TR 1920, 1924).

314. Before each witness testifies at trial, pictures are taken by IRS CI Division Special Agents James Flink and Stephen Corcoran, who, according to defense witness, Chris Milson's affidavit, make comments "about whether the witnesses had paid their taxes or not" (1:09-cv-913, R. 34, Exh. XXXX)(See Exh. K-4).

315. Defense witness, investor Kim Newell asks in her sworn affidavit, "Why didn't a court clerk do it [take the picture]? I then wished I hadn't let them take my picture, and was worried that they had some other purpose for wanting my picture". Newell also complaints about IRS Agent Erica Boerman, who contacts her at home by phone, asking questions that made Kim "very uncomfortable", and caused her to suspect they "would twist everything I said around to their advantage. And indeed, that did happen" where "they turned [her response] around", "implying that I believed Jan was guilty of 'stealing' our money" when I clearly stated, "I didn't believe that Jan was guilty of the ponzi scheme that they were accusing her of" (1:09-cv-913, Exh. XXXX)(See Exh. L-4).

316. Marcusse was denied the right to cross examine 25 out of the 26 government investor witnesses, and was only allowed to cross examine selected government witnesses after Kaczor asks for a side bar with the judge on page 800, totaling just 12 of the government's 77 witnesses.

317. One witness, sales associate Mike Brewer, who unlike the other salesmen, was only charged with the misdemeanor failure to file in violation of 26 USC §7203, was observed by Marcusse as being signalled by AUSA Schipper how to respond to questions under cross examination.

318. When Marcusse sees this witness tampering, she asks Brewer, "Earlier Mr. Doele asked you if you still believed in her, as in me, in February '03, and I -- and you hesitated as I saw Mr. Schipper shake his head. Is he signalling you on how to respond with answers?" (1:04-cr-165, R. 474, TR 1166)(See Exh. M-4).

319. That Brewer responded "not at all" to Marcusse's question (See Exh. M-4) does not mean he was not being told through signals from prosecutors how to respond, merely that he knew he had a plea agreement at stake, as he admits to attorney Joe Doele for "no incarceration" (Id., R. 474, TR 1149)(See Exh. M-4).

320. In response to Doele's question of whether he told investigators on 2/24/03 that he still believed in Marcusse, Brewer responds, "I guess I could have, yes" (Id., R. 474, TR 1150-51)(See Exh. M-4).

321. AUSA's Schipper and Gezon present Jessica Dudkiewicz, who was William Flynn's niece and only 20 years old when she met Marcusse, but who sobbed throughout her testimony (Id., R. 473, TR 842)(See Exh. N-4).

322. AUSA's Gezon and Schipper even present Rev. Bernard Blaukamp, Pastor of the church Buffin and Albrecht attended, to infer Buffin had contacted him to ask he perjure himself (Id., R. 478, TR 1774, 1781-83)(See Exh. O-4). Ken DeBoer later asks Blaukamp, "Did Mr. Gezon ever indicate to you that there was a jail cell waiting for you if you weren't willing to agree with what was on that document as presented to you..?" (Id., R. 517, TR 2763)(See Exh. O-4).

323. On 6/4/05, the Saturday before defense witness Virgil Boss is scheduled to testify on Monday, 6/6/05, Virgil is arrested on a stale traffic warrant, with the officer admitting in his report, "I received information on Boss who had a warrant for his arrest and drives while suspended" (1:09-cv-913, R. 34, Exh. YYYY)(Exh. P-4).

324. Chris Milson attests in an affidavit, "I know of at least two potential witnesses that would not testify because they were intimidated and frightened away by the IRS" (See Exh. K-4).

325. One of the defense witnesses was investor Beth DeMeester, who Judge Bell had granted as a defense witness (Id., R. 401, p. 2)(See Exh. Q-4). Beth was one of the first investors, as well as from the largest investor family, dollar-wise (Id., R. 516, TR 2592-93)(See Exh. R-4). Beth also spoke directly with investment manager John Nichols, who was also the individual with whom the initial Sanctuary Ministries was formed (Id., R. 518, TR 3106).

326. Another defense witness was investor Ray DeMeester, Beth's ex-husband, who could have testified about the Bahamas stock trading program and verified evidence tampering with the 6/99 investor newsletter, GX-31, which had all of its attachments removed before submission by AUSA Gezon, one of which was wiring instructions to an account at SSBT that Ray used to directly wire $14,000 on 7/14/99 (GX-80, p. 11)(See Exh. T-4).

327. Attorney Dave Kaczor conceals the evidence of witness tampering by averring to the court he "couldn't find three or four witnesses" (Id., R. 516, TR 2644)(See Exh. U-4).

328. Sales associate, Tom Wilkinson, who is not charged at all, appears to testify as a defense witness from Green Bay, Wisconsin, except AUSA Gezon falsely represents, "I've known of Mr. Wilkinson because he's a target of investigation in Wisconsin having to do with Access and other investments", in effect threatening him with prosecution if he testifies and causing his counsel to advise him to plead the Fifth (Id., R. 518, TR 2872-73)(See Exh. V-4).

329. Judge Bell had granted Wilkinson as a defense witness on 5/27/05 during the trial (Id., R. 401, p. 2)(See Exh. Q-4).

330. Public records obtained afterwards show the "investigation in Wisconsin" was to do with Rob Wilkin in Case No. 1:03-cr-116-WCG, which was terminated on 3/4/05, with Wilkin having pled guilty on 10/23/03 (See Exh. W-4, R. 28), and confirming Dan Hammond's 10/4/04 Affidavit where he was advised by the FBI in 11/03 only Wilkin would be indicted (See ¶ 113, supra). Hammond's affidavit was first submitted to the court as an exhibit to the 11/5/04 Complaint, which Magistrate Carmody initially refused to file and then when filed, it was removed and filed at Dkt. No. 149, p. 9-13 (See ¶ 198, supra).

331. Tom Wilkinson could have testified to evidence tampering with GX-80, the list of investors obtained from the computer seized on 12/20/01 (See ¶ 299, supra), which shows the sales manager for each investor, except in Wilkinson's case, his name "Tom" was removed from every one and replaced with "Wes" for Wes Boss before GX-80 was submitted into evidence by government witness Julie Siemen (Id., R. 473, TR 901), who worked for the Bosses, to conceal the evidence proving selective prosecution occurred in this case (See Exh. X-4; Compare to Exh. T-4, p. 15).

332. Exhibit X-4 shows Tom Wilkinson, who was not charged, had 37 investors and $1,757,319.56 in investor deposits, whereas Dave Albrecht, who was charged, had 23 investors and $1,855,252.64 in investor deposits, as shown in GX-88 (See Exh. Y-4).

333. Investors who testify to having Wilkinson as their sales manager include Dennis Vandenbergen, Joey Nowak, Jeff Borremans, and Tom Gerbyshak, all of whom show "Wes" as their sales manager on GX-80 (Vandenbergen, R. 473, TR 697; Nowak, R. 472, TR 544; Borremans, R. 472, TR 523; Gerbyshak, R. 516, TR 2519-20).

334. When Siemen is asked by Marcusse under cross if Wilkinson was still with the company, when Vandenbergen and Nowak list Wes as their manager, if she believed GX-80 was "accurate", Siemen responds, "Pretty much, yes" (Id., R. 474, TR 1015-16) (See Exh. Z-4).

335. If Wilkinson had been able to testify, as established in Exhibit X-4, several investor deposits were made out to his company, Access Global, which were then directly wired to investments, such as MLC, proving investments were made, as also would his bank accounts, showing the fabrications made in the IRS summary exhibits.

336. Dan Hammond's affidavit of 10/4/04 confirms, "funds were sent directly to the end investments" (Id., R. 149, p. 9).

337. Wilkinson's company accounts were not included in Agent Flink's summary exhibit, GX-170, showing investor deposits, whereas Wilkinson's $1.8 million of investor deposits is included in GX-170's totals, showing yet another means utilized to conceal the evidence of investments.

338. *Midway through the trial, AUSA Gezon places it on the record* that "the Court's headsets...actually magnifies the conversations occurring confidentially at our desk and the defendants' desks quite loudly...I'm told by the witnesses and the court officers that are listening to this that they can hear the conversations of the attorneys and the parties" (Id., R. 476, TR 1503-04)(See Exh. A-5).

339. The ability of the prosecution team to eavesdrop on the defendants was not placed on the record until after 52 of the 77 government's witnesses had testified.

340. On 5/16/05, when the month-long trial began, Marcusse had been confident of acquittals on the "ponzi scheme" charge where she intended to use documents from the bank records to establish investments had been made.

341. The first morning of trial, when Marcusse asks about Judge Bell's order denying some bank records, which "goes directly to my defense in that the bank records show the money was invested with other individuals", he accuses her of "harass[ing]" him with "absolutely nonsensical motions", that she did "not understand what this trial is about", as it is "not whether you invested money wisely", or "whether or not the money that you allegedly may have had to invest was run off with a third party or a fourth party or someone else is really not the issue here", because the "allegation is that you and others fraudulently and deceitfully deceived other people, not that other people deceived you, which may be the case. I imagine the government might concede that if you ask them" [emphasis added] (Id., R. 470, TR 8)(See Exh. B-5).

342. In other words, the question of fact of whether anyone other than Marcusse was the direct or proximate causation of investor losses is made an irrebuttable presumption before the first witness or any evidence is presented, and in so doing, Judge Bell admits to ex parte communications in which he became privy to the knowledge this prosecution team knew she had been defrauded, thus demanding this outrageous limitation on her defense.

343. By limiting the defense to bar evidence and witnesses on where investments were made and what happened to them serves not only to cheat Marcusse out of a legitimate defense, but it serves to cheat the investor victims out of a legitimate source of restitution and protect those individuals and entities that committed fraud to obtain and keep the funds not only from criminal but civil liability by framing her for their crimes.

344. At the 5/5/05 pretrial conference, Marcusse objects to the "unclean hands" of the Dept. of Justice due to the "close relationship" of Plaster to Ashcroft, a government employee having "endorsed in writing twice a bank that we used that failed", the "government interfer[ing] in our litigation on behalf of our people", referring to the Boss civil litigation, voicing her "concern[] for the [investor] victims" where she has been "hampered in my efforts to be responsible to the victims", violations of speedy trial, the IRS being "in attendance at the grand jury" in violation of Rule 6, "safety issues", including by being classified a "tax protestor" through being improperly linked to "being called a white supremacist" (Id., R. 651, TR 19-25). Marcusse requests all of the grand jury transcripts to establish IRS fraud, perjury, and other violations (Id.).

345. On 5/12/05, Marcusse submits a pretrial motion for "Compulsory Joinder of Indispensable Parties to this Act", naming 11 individuals who should be joined as co-defendants for their culpability in investor losses, including Robert Plaster, Gerard Forrester, Christopher Lunn, Mohammed Harajchi, Richard Gerry, James Kramer-Wilt, Dan Evans, Thomas Connelly, John Ashcroft, James Longwell and Winfield Moon

(Id., R. 369-1)(See Exh. C-5).

346. In the Compulsory Joinder motion, Marcusse states she had been told, "a month ago, a defense attorney in this action indicated to one of the co-defendants that the government intended to drop all charges but Count 42, the 'tax' charge. Had that occurred, this action would not be necessary. With other charges still included, particularly mail fraud, it is a fact that Claimant absolutely relied upon the individuals listed above for her decisions and the information she subsequently relayed to members of her group"(Id., R. p. 3)(See Exh. C-5).

347. On 4/19/05, the Supreme Court decided **Dura Pharmaceuticals, Inc. v. Broudo**, 544 US 336.

348. On 5/17/05, the second day of trial, Judge Bell denies the motion by finding, "In the criminal context, it is well settled that the decision whether to prosecute an individual and what charge to bring before the grand jury are decisions that are committed to the prosecutor's discretion" (Id., R. 373, p. 5).

349. Marcusse submits 31 pretrial motions or complaints, none of which are granted other than a motion to wear makeup in court (Id., R. 381, 390), which was filed 4 days into the trial after U.S. Marshals would not permit her makeup in lock-up. Nor was she permitted a change of clothes or socks, obtaining these items all wadded up in a grocery bag each day to make her look as disheveled as possible.

350. A pretrial motion to dismiss the mail fraud counts is filed based on "unclean hands", selective prosecution, and the suppression of the evidence proving investments had been made in order to maintain a "ponzi" allegation and protect individuals such as Plaster, Agent Forrester and others (Id., R. 315).

351. A pretrial motion to dismiss Count 42, the conspiracy against the United States, objects to Agent Flink's presence at the grand jury as a violation of Fed. R. Crim. Proc. 6(d)(1); to Magistrate Scoville's holding, "Article I, Section 10, doesn't bind the federal government", which allowed the federal government to impair the obligation of contract to injure the investor victims; to the misrepresentation of evidence showing all of the checks underlying each of 39 mail fraud counts were issued from Sanctuary Ministries, not Access Financial Group, as alleged in the indictment; and to bonus structures for government employees that present a personal conflict of interest, resulting in perjury, false evidence and racketeering (Id., R. 317).

352. A pretrial motion to dismiss the money laundering counts, which rest on the predicate mail fraud counts, argues the 15 promotional money laundering counts (43-57) are multiplicious in that they are the same transactions as 15 of the mail fraud counts, violating double jeopardy, and that Congress intended money laundering to be used against organized crime and drugs, which otherwise didn't apply except where the Office of U.S. Attorney prepared a "fraudulent arrest warrant by including drugs".

As shown by Besser's arrest paperwork, "the IRS fraudulently classifies all defendants charged with money laundering as high-level narcotics traffickers irregardless of whether or not the case is a 'drug' case" (Id., R. 312).

353. All of the motions are denied by Judge Bell disregarding the points raised to hold, "it will be the government's burden to prove the elements of the charged offenses beyond a reasonable doubt" (Id., R. 325, p. 3).

354. The pretrial motion for the bank records held by attorney Gurmail Sidhu, which were seized under an "organised crime" and "drug-trafficking" warrant (See Exh. E-2)(¶ 135, supra), and for MLC Development is denied (Id., R. 333, 342).

355. After being denied a defense of using bank records to a Ponzi scheme charge, Marcusse challenges Judge Bell for running an unconstitutional court, objecting it could not be functioning as an Article III court, but must be an Article IV, statutory, commercial or other court, such as administrative law, and asking for his oath of office, he threatens her with removal, "upstairs you go and you can sit and watch us do this trial on a video-audio feed", calling her ideas "crazy" (Id., R. 470, TR 9-12).

356. While Judge Bell admits the "allegation" is she was "accused of running a Ponzi", he has Kaczor explain Marcusse's rights to her own bank records in response to her objection she "can't defend it without being able to get bank records, especially trapped in jail, which makes me suspicious that's the reason I was trapped in jail, to prohibit a defense" (Id., R. 470, TR 13)(See Exh. B-5).

357. Kaczor advises Marcusse she could "review any of the bank records that were used to formulate the [Rule 1006] summaries, and therefore, she would be able to look at bank records", which she objects does not answer the question of whether she can <u>use</u> the bank records, resulting in Judge Bell denying her the right to proceed pro se "because you do not know what you are talking about" (Id., R. 470, TR 13-14, 18)(See Exh. B-5).

358. In the Modena trial in 2000, which was conducted in front of Judge Bell by AUSA Davis, the Sixth Circuit holds Judge Bell erred in admitting challenged IRS summary exhibits into evidence where AUSA Davis conditioned the right for Modena to view the IRS's underlying documents on reciprocal discovery because he had an "absolute right" to the records.

359. According to Ed White of the Grand Rapids Press in a 9/16/02 article, Modena was an "accused tax rebel", whom prosecutor Don Davis "pursues" with "a passion". Modena was reported to remain "mute" throughout the trial (See Exh. D-5).

360. As the result, Marcusse should have had the "absolute right" to review and copy the underlying source documents to the IRS Rule 1006 summary exhibits for her trial.

361. That Judge Bell was aware of this duty is established at the 5/5/05 pretrial conference, when AUSA Gezon states summaries of the bank records would be used as exhibits, Judge Bell asks, "You will, I presume, in offering the summaries offer the underlying exhibits so that the defendants' counsel and defendants can examine those contemporaneously", to which Gezon responds, "Absolutely" (Id., R. 651, TR 14).

362. This commentary disregards the "protective" order placed on the Jencks and **Brady** materials and the government's trial exhibits in which the pro se defendants would not be allowed access to such materials until at trial (Id., R. 288)(See ¶ 298, supra).

363. Marcusse had no access to the bank records prior to trial where she was denied bond, and as admitted by Agent Flink at trial, the Bosses had kept the bank records and given these original documents to him (Id., R. 520, TR 3406).

364. Where Kaczor asks for clarification as to whether he was to "take over for Mrs. Marcusse in the questioning of witnesses", an "opening statement", or "objections to be made", Judge Bell orders, "Absolutely. Absolutely, until otherwise" Id., R. 470, TR 31)(See Exh. B-5).

365. Where Marcusse refuses to plead guilty in response to the incited assault and death threats (See ¶¶ 138-140, supra); where she figures out the drugging scheme to silence her in court or have her removed for "outbursts" (See ¶¶ 15-159, supra); where she refuses to be further conned by the scam concocted by Agent Moore and Rendleman to remain silent at trial (See ¶ 268, supra); where she refuses to plead guilty under threat of being labeled a "terrorist" (See ¶ 250, supra); and where she insists on going to trial and using bank records to prove legitimate investments were made, which AUSA's Gezon, Schipper and Davis had the duty to provide to her, the only means left to sabotage her defense is to deny the right to proceed pro se and make objections to the falsified IRS summary exhibits.

366. Prior to being threatened with removal a second time, Marcusse asks, "Am I considered a tax protester in this case?", to which Judge Bell responds, "I don't necessarily know what a tax protester is", explaining, "I've had people who have called themselves that, and some of what they have challenged in this Court bears an uncanny resemblance to what you have brought up about this not being an Article III court and where is my appointment process and the whole thing. But I'm not accusing you, nor is anyone else, I think, accusing you; and besides, that's irrelevant to this proceeding" (Id., R. 470, TR 19).

367. On 3/5/05, or two months' previously, Judge Bell identified "tax protesters" as "volatile" and "anti-government", having presided over "more than 100 cases" of them, linking them to terroristic activity by equating them to Matthew Hale's group, who was suspected of the Lefkow murders (See ¶¶ 227-230, supra).

368. A 1984 Tax Court decision held tax protester cases should be dealt with summarily without discussing the issues.

369. Agent Moore's 9/27/04 Form 302 discussing Rendleman sending documents to Besser to sign are described as "anti-government/tax protestor type documents" (See Exh. C-4, p. 2), further stating, "Many of the subjects involved in this scheme are tax protestors or are anti-government. No known acts of violence or physical threats have been made" (Id., p. 1).

370. In his cross examination of Marcusse at trial, AUSA Schipper asks, "when you told the folks at the seminar in March of 2001 -- or May of 2001 that you pay your taxes, that was a lie, wasn't it?", to which she responds, "I pay approximately 160 different types of taxes. Property taxes, sales taxes, gas taxes, taxes endlessly. And I filed when I believed it to be according to the Tax Code appropriate to file." When he attacks again on this point, she responds, "I have filed tax returns for 25 years" (Id., R. 519, TR 3170)(See Exh. E-5).

371. In his appellate brief dated 4/27/07 in Case No. 05-2586, AUSA Schipper represents Marcusse "filed many frivolous anti-tax pleadings and correspondence, which contained typical tax protestor rhetoric" (p. 31).

372. On 3/12/09, a Notice of Deficiency is issued against Marcusse, based upon an "Other Income Lead Sheet" from the 2005 trial for $936,626 in "adjustments" for unreported income from 1999-2001 based on a "source" of income under 26 USC §61 defined as a "Ponzi scheme" in which she had not been permitted the use of bank record documents in rebuttal (See Exh. F-5).

373. On 6/11/09, Marcusse files a Petition for a redetermination of all of the $936,626 in U.S. Tax Court, opening Docket 14234-09.

374. Where Marcusse is able to proceed pro se, without being silenced by an attorney, and the IRS is required to actually prove their allegations with competent evidence, on 1/6/12, a Motion for Entry of Decision in Marcusse's favor is filed, resulting in a 1/31/12 Judgment in which it is "ORDERED AND DECIDED that for tax years 1999, 2000, and 2001, there are no income tax deficiencies and no additions to tax and penalties pursuant to I.R.C. secs. 6651(a)(2), 6654, and 6651(f) due from petitioner" (See Exh. G-5).

375. At the criminal trial where Marcusse is denied the right to proceed pro se, Judge Bell orders, "You will confer with your lawyer from now on", causing her to respond, "I will be putting in a motion for bias and prejudice as well", which Judge Bell dismisses, "File as many as you would like. But I'm again telling you that they're not focused, and I'll take them for what they are" (Id., R. 470, TR 20) (See Exh. B-5).

376. George Besser objects, "I was brought here from Mexico as -- well, as I read

here, as a drug dealer", asking if it was legal for a drug charge to appear on his paperwork in which "permanent detention's been ordered" (Id., R. 470, TR 20-21).

377. When Besser asks how the "judicial system in this country" could allow for him to be "kidnapped from Mexico", Judge Bell says, "I can't go back and unwind some clock somewhere that someone else did. All I know is you're here, I have jurisdiction of you, and we're going to have the pleasure of you being with us throughout this next trial, throughout this trial" (Id., R. 470, TR 24-25).

378. When Marcusse asks to be recognized, Judge Bell states, "you can talk through your lawyer", to which she responds, "So I am being denied being able to speak for myself in this trial?" When Judge Bell responds, "Yes, because you are confused about why you're here and what you're doing", Marcusse objects, "There is no constitutional effect here", causing him to threaten that if she "can't keep quiet through this trial", she will not be able to remain in the courtroom, threatening her with removal for the second time that morning (Id., R. 470, TR 26-27).

379. For voir dire, the U.S. Marshals frog march Marcusse, Besser, Visser, and Buffin, who does not regain bond until the next afternoon (¶¶ 294-95, supra), in front of the entire jury pool in handcuffs.

380. None of the court-appointed defense attorneys would object when court reconvened, Marcusse could not object without risking removal, and when Besser asked to raise a question, Judge Bell refused to allow him (Id., R. 470, TR 28).

381. After the trial, it is learned that on the front door of the courtroom, there is a sign closing the voir dire to the public, which includes the defendants' families and friends, preventing witnesses to the U.S. Marshals' maneuvers (See Exh. H-5).

382. Jeff Visser, the defendant with the least time operating as a sales associate and not privy to investment principals other than Mike Carney and Richard Gerry, is the only defendant out of the four requesting to proceed pro se that was actually permitted by Judge Bell to proceed pro se at trial.

383. In his address to the jury before opening statments, Judge Bell tells them, "The defendants here are represented by the lawyers that I pointed out to you, and in more than -- I guess in two or three or four circumstances, the defendants have indicated that they wish to participate in this proceeding, and they may in a <u>limited fashion</u> be able to proceed in consultation with the lawyers that will be working with them. As you know, it is a constitutional right they have to represent themselves, and in an abundance of caution this Court has standby lawyers who are assisting them in this matter" [emphasis added](Id., R. 470, TR 32).

384. Judge Bell also explains the "task that you and I will perform during this trial. I will decide what rules of law apply to this case." "You [the jury] will decide whether the government has proven beyond a reasonable doubt that the defen-

dants committed the offenses that they were charged with. You must base that decision on the evidence in this case and my instructions of the law. Nothing else will be a part of your decision" (Id., R. 470, TR 34).

385. Judge Bell further advises, "I have to tell you it's been my experience that normally the most important parts of a trial you will hear more than once because they're that important" (Id., R. 470, TR 39).

386. The trial transcripts show the "Ponzi" or "Ponzi scheme" was repeated at least 166 times.

387. In his opening statement, AUSA Schipper begins, "Myself along with Mr. Gezon represent the government in this case, and this is a criminal case in which charges were brought against the eight defendants. Ponzi scheme. You've heard the word already, Ponzi scheme. That's what this case is about" [emphasis added], going on to repeat the word "Ponzi" or "Ponzi scheme" 10 times in the first page alone (Id., R. 470, TR 41)(See Exh. I-5).

388. AUSA Schipper is very clear, "You'll hear that their money was being invested when in fact the facts will show, the testimony will be that their money was spent. It wasn't invested" [emphasis added](Id., R. 470, TR 50)(See Exh. I-5).

389. After hearing the false representations made by AUSA Schipper in his opening statement, Marcusse insists Kaczor must let her give the opening statement or she will put in a notice of appeal to the Sixth Circuit.

390. When Judge Bell asks Kaczor for his opening statement, he informs the court, "Mrs. Marcusse wishes to give the opening statement", to which Judge Bell expresses his displeasure in front of the jury, "You will give it. Either you will give it or it will be waived." When Kaczor responds, "Okay. Can I have just a moment, please", because Marcusse was telling him that was not acceptable and she would immediately appeal, Judge Bell calls a recess (Id., R. 470, TR 74-75).

391. Judge Bell admonishes Kaczor, "I made myself clear that you would conduct her defense", to which Kaczor responds, "we've had a conversation. She believes that she can convince you that she is prepared to present a defense that is a relevant defense...she wishes to question the witnesses and present an opening statement". Judge Bell responds, "I'm well aware that's what she wants to do. I think the proof I had from all the filings that she blitzkrieged me with last week together with her statements this morning, that I want to see -- I want to have more time to develop some kind of evidence that she understands what this case is about...But I want you to talk to your client and see whether or not she wants you to give an opening statement", calling another recess (Id., R. 470, TR 75-77).

392. Marcusse remains adamant that she give the opening statement as it is her life at stake on fabricated charges. When court reconvenes, Kaczor states, "Your Honor,

I certainly don't want to argue with you and I understand the Court's ruling, and I am 100 percent prepared to either give an opening statement or reserve an opening statement", to which Judge Bell adjusts his position, "The question is have you talked with her and do you have an understanding of whether she can? That was the question." Kaczor responds, "I've explained to her what opening statement is, what she can and what she can't say", causing Judge Bell to allow Marcusse to give the opening statement (Id., R. 470, TR 77-78).

393. Marcusse gives the opening statement where she tells the jury what evidence she intends to present, "We did not run a Ponzi...The proof will show that bank records will prove to you that we invested over $10 million on benefit -- for the benefit of investors. The proof will show that in March of 2001 a bank that we were using that we had CDs in failed. The proof will show that the Department of Justice had an agent who had endorsed this bank in writing, and this was an endorsement upon which I had relied in order to make the decision that it was a safe bank...The proof will also show that it was a stock-based investment. It was not a bank debenture or type of trading program as they're trying to make out the main investments of our company to be. This was a CD-backed program with margined and leveraged positions in the stock market, and it did have a very high return. The proof will show we left the returns offshore rather than bringing them in every month because it took time to move money back and forth. The proof will also show that we did handle a lot of retirement funds. However, it will show that we used legitimate pension and 401(k) rollover organizations like Mid-Ohio Securities which to the best of my knowledge is still in business today as the recipient for IRAs and pensions. The proofs will also show that it's perfectly legitimate to open up your own profit-sharing plan, which was the other option that we had. The government is also trying to make a case for fraud with tax returns and not reporting income. We didn't report taxes on the $10 million because we didn't get to spend the $10 million. We invested it. So therefore, there were no taxes due on monies that were invested elsewhere...We used an exception under the Tax Code...It's called the Exception Act [sic][should be "exception at"] 508(c)(1)(A)...The evidence will show that we did not have over $20 million...The evidence will also show that one of our associates was not listed on one of the exhibits so that his bank accounts could not be included, as considerable amounts went to the Branson Project on behalf of the investor group...I did try to begin litigation against the responsible -- one of the responsible parties. And I believe that at the end of all of this, that you will be able to easily find yourself able to find all of us innocent of any of these charges" (Id., R. 470, TR 79-83)(See Exh. J-5).

394. Thereafter, when coming in or out of court, at every recess, lunch, and break

for the day, of every day of the month-long trial, or at least 136 times, the U.S. Marshals were physically abusive and verbally hateful, tightening Marcusse's handcuffs so as to inflict pain, wrenching her arms behind her back so as to pull her arms out of their sockets, refusing to even allow defense counsel to speak to her, all the while telling her she had "pissed off" the judge and she would "pay" for it.

395. During the first witness's testimony, investor Paul Stinger, the transcript does not reflect defense attorney Anthony Valentine and Judge Bell chuckling together about the table leg that was broken by U.S. Marshal Steve Hetherington when he violently attacked Marcusse from behind on 11/9/04 (See ¶ 182, supra), where Judge Bell says, "I think we've got a broken leg on that", and Valentine responds, "That's what I hear" (Id., R. 470, TR 120)(See Exh. K-5).

396. It was shocking for Marcusse to realize how disloyal these court-appointed attorneys were to their charges, not only finding nothing wrong with with federal court officials physically abusing a small middle-aged woman (See Exh. A), who by their own admission was not violent, but because she wanted to exercise the right to a jury trial, finding the abuse of a pretrial detainee humorous.

397. During the trial, Besser is deprived of his medication, causing a seizure. On 5/19/05, concerned for his health, Marcusse tells Judge Bell that it is "physically impossible" to deal with being forced to remain in a drunk or holding tank 6 or more hours a day in a month-long trial, particularly where she isn't permitted her files and can't sleep on the hard floor, arguing "I'm too old for it, so I know Mr. Besser's too old for it." The Deputy Marshal agrees that Marcusse is "probably pretty accurate as far as the times" (Id., R. 473, TR 634-36)(See Exh. L-5).

398. Marcusse, Besser and Visser are held in Newaygo County Jail, over an hour's trip each way to the courthouse when Kent County Jail is 2.6 miles distant where federal prisoners are also housed. They are transported in chains and shackles.

399. Judge Bell asks the Deputy Marshal to "see if these three are dragging their feet. If they're not dragging their feet, then I don't see any reason why they can't get them up and get them in and get them up here more expeditiously. If they're dragging their feet, I guess there's nothing we can do about it" (Id., TR 634-35)(See Exh. L-5).

400. Judge Bell should have cause to know that a prisoner has no control over his schedule in jail.

401. Every day of the month-long trial, Marcusse had to put her files and intended evidence in a large clear garbage bag and drag it hunched over behind her because she was handcuffed and shackled and it was too heavy to carry.

402. While in the van used to transport Marcusse to and from the courthouse, her bag was put in the back of the van. On 5/23/05, the van driver leaves Marcusse's

bag (and her files) behind, which she objects to Judge Bell prevents her from defending herself. She also asks for a mat in the drunk tanks because the "standard practice" was changed for the trial to leave the televisions on 24/7, and "I can't get any sleep." The Deputy Marshal says, "I can bring it up with Newaygo, but I don't know how much cooperation we're going to get or not get." Marcusse responds it is "standard practice at the jail" to "turn the TVs off for people who are in trial", whereas Judge Bell now claims, "I tried to get you transferred as I recall earlier to Kent County because I thought it would be easier, but Kent is full, absolutely full" (Id., R. 475, TR 1174-75)(See Exh. M-5).

403. A "Jail Bed Reports" available from "Court Services" at Kent County Courthouse, Grand Rapids, shows there was no overcrowding at Kent County Jail in either May or June of 2005.[5]

404. During the trial, on 6/9/05, when David Paul Rendleman is rearrested, who also had the Honorable Robert Bell as his judge, there was room for Rendleman at Kent County Jail to be housed (See Exh. N-5).

405. No improvement is made in conditions for the entire trial. If anything, as Marcusse remarks the second time she makes this complaint, conditions had gotten worse (Id., R. 475, TR 1175)(See Exh. M-5).

406. After trial, Marcusse files an affidavit entitled, "Pre-Trial Detention Used for Torture and Mental Abuse to Prevent a Fair Trial", describing the excessive force, physical abuse, and intimidation tactics employed against her, Besser, and Visser to obstruct a defense (Id., R. 545-1)(See Exh. F-4), all apparently because they did not want to give control over to court-appointed attorneys of their defense that the public record showed they would be foolish to trust.

407. At the beginning of the second day of trial, on 5/17/05, AUSA Gezon brings up the issue of **Faretta** as to Marcusse,[6] claiming "at the magistrate stage [she] clearly put on the record that she wanted to represent herself...Since that time she's filed pleadings and made statements in which she appears to be quite ambivalent about what she wants to do. And I think that before we get much farther in this trial, we need to really clarify it so we know what she wants to do or what her position is so the Court can rule on that. The cases seem to say, Your Honor, that the fact that it's an awful decision, that it's unwise, that she's probably going to go down in flames if she pursues what she wants to do, doesn't apparently affect her waiver. She's got the right to do that, and at this stage because she's chosen such a silly, perhaps frivolous defense, it is her choice to make. But I understand from speaking to Mr. Kaczor this morning that it appears that she does

5 "Each week detailed reports describing the breakdowns of the jail population by sentenced and unsentenced beds are provided to each District and Circuit Court Judge".
6 **Faretta v. California**, 422 US 806 (1975).

want him to do the cross or the direct examination and cross" (Id., R. 471, TR 137-139)(See Exh. O-5).

408. AUSA Gezon falsely represents the record in that, from the time she was attacked in Newaygo County Jail on 7/24/04, causing her to sign the waiver of counsel (Id., R. 18), Marcusse was never, ever, ever ambivalent about whether she wanted to defend herself at any hearing, in any pleading, in any statement, or at trial--she was adamant about wanting to proceed pro se.

409. That morning before court, Marcusse only gave Kaczor permission to conduct cross examination of witnesses because she had been barred by Judge Bell from doing so herself, and there would be no meaningful cross examination on her behalf if she continued to refuse to cooperate with him or denied him that ability.

410. In an 8/23/11 Affidavit filed in response to Marcusse's §2255, Kaczor admits that prior to trial, "Marcusse refused to discuss her case with me, as well as any possible defense that she wanted to present on her behalf" (1:09-cv-913, R. 60, ¶ II, p. 5)(See Exh. P-5).

411. In response to AUSA Gezon at trial, Judge Bell states he must determine whether the particular defendant is "going to follow the rules of this Court", as it "is the prerequisite for a **Faretta** self-representation", while admonishing "it's not a wise decision", he admits "it's a decision that each party has to take unto themselves" (1:04-cr-165, R. 471, TR 139-140)(See Exh. O-5).

412. Kaczor responds he had spoken with Marcusse that morning stating, "It's my understanding that she wishes to continue to, as I say, represent herself, but at the same time she would like to have what I would call hybrid representation. She would like me to ask some questions of the witnesses while she may be permitted to ask questions of other witnesses, and I guess I'm asking for the Court's instruction. Will I be allowed to cross-examine the next witness, and assuming she can follow the rules of evidence, be allowed to cross-examine a witness after that?", to which Judge Bell responds, "Very well" (Id., R. 471, TR 140)(See Exh. O-5).

413. Judge Bell does not address Marcusse for a response as to what she wanted. Where Marcusse had been threatened that if she spoke without permission, she would be removed, at that point in the trial she was unable to object to either AUSA Gezon's or Kaczor's characterizations of her wishes.

414. Once Kaczor is granted hybrid representation, Marcusse loses control over her defense, as he does not object when requested, he does not permit her to cross examine the government's investor witnesses, he does not submit the evidence she provides to him, and unbeknowst to her, she also loses the right to challenge the denial of the right to proceed pro se and the right to challenge ineffective assistance of counsel in a §2255 proceeding, in effect freeing AUSA's Gezon and Schipper

to present falsified and fabricated evidence, suborn perjury, and materially misrepresent the facts in evidence in testifying through cross examination and in closing arguments. It also frees Judge Bell to rule in the government's favor at every turn, without the fear of reprisal, and all of which was accomplished in collaboration with Marcusse's own court-appointed counsel.

415. That morning before trial, Kaczor made no mention of hybrid representation, nor did he explain its ramifications or what rights and remedies she would lose as the result of merely remaining silent when he suggested it in court, rather than risking objecting without permission from Judge Bell at that point, given his repeated threats of removal the previous day in court (See ¶¶ 355, 378, supra).

416. Nor did she have access to a law library to discover the scheme perpetrated against her. From her first appearance on 7/22/04, the day after Marcusse was taken to Newaygo County Jail, there was an order in place that she not be permitted access to its law library (Id., R. 680, TR 11).

417. At the 7/28/04 detention hearing where the colloquy is conducted regarding Marcusse waiving her right to counsel, Magistrate asks her if she'd read the Federal Rules of Criminal Procedure to which Marcusse responds, "No. You denied me access to the law library last week" (Id., R. 178, TR 7)(See Exh. Q-5). Regarding the same question as to the Federal Rules of Evidence, Marcusse states, "I'm familiar with the book only but again I was not allowed to look at the law library" (Id., TR 10)(See Exh. Q-5).

418. By having an attorney of record assigned, even though only as standby, Marcusse was barred from using the law library, as admitted by Roger Palmiter, Newaygo County Jail Administrator, in his 9/2/04 letter (Id., R. 157-3, p. 14)(See Exh. N-2, p. 1).

419. In his 8/23/11 Affidavit, Kaczor misconstrues Marcusse's agreement to letting him cross examine witnesses where he does not include her being denied the right to proceed pro se in his timeline, instead acting as if there had been no coercion, no threats, no abuse, where he states, "As the trial progressed and Ms. Marcusse requested that undersigned counsel be more involved in helping her to represent herself, undersigned counsel requested that his role as standby counsel be expanded to a hybrid representation" (1:09-cv-913, R. 60, p. 5-6, ¶ LL)(See Exh. P-5).

420. In his 8/23/11 Affidavit, Kaczor falsely states Marcusse "was free to make objections" (Id., ¶ OO (2))(See Exh. P-5).

421. On direct appeal, where Marcusse raises the denial of the right to proceed pro se as Issue VI in a pro se supplemental brief, which was approved for filing by the Sixth Circuit (See Exh. R-5), its issues are "declined" consideration, but the "adequate, alternative remedy" to not being heard is held on 5/14/09 to be

a motion to vacate pursuant to 28 USC §2255 or a civil rights action under 42 USC §1983 (See Exh. T-5, p. 3).

422. On 10/26/12, by copying the Government's Response, as filed under the signatures of AUSA Jennifer McManus and Donald Davis, now U.S. Attorney, as appointed by the Chief Judge of the Western District of Michigan (1:09-cv-913, R. 59, p. 53-59), Judge Bell denies Ground Eight, the denial of the right to proceed pro se, finding "defendant's invitation to counsel to participate in the trial obliterates any claim the participation in question deprived the defendant of control over his own defense" (Id., R. 77, p. 24-25).

423. Judge Bell's finding misrepresents Marcusse's silence, under his threats of removal, assaults, physical abuse, hostility and otherwise poisonous atmosphere, to Kaczor's request as the overt act of initiating his involvement in her defense, e.g., an "invitation", in a manner no different than the rapist who argues his victim "invited" his unwanted violation by remaining silent when he threatens to kill her if she makes a sound.

424. No mention is made of Marcusse's objections to being denied the use of the bank records for her defense, or that Judge Bell and AUSA's Gezon and Schipper knew they had a duty to allow her access to examine and copy the records prior to trial, misrepresenting the record by finding she had been "temporarily" denied the right to proceed pro se because she "demonstrated, through her behavior, that she was unable or unwilling to abide by courtroom protocol" (Id., R. 77, p. 22).

425. Similarly, again by copying AUSA McManus's and U.S. Attorney Donald Davis's Response (Id., R. 59, p. 76-78), Judge Bell disregards 37 specific allegations of ineffective assistance of counsel by Kaczor, not one of which is addressed on the merits, because "Marcusse elected hybrid representation" (Id., R. 77, p. 43).

426. By perpetrating this "hybrid representation" scheme against Marcusse in a record that shows no explanation was made of the rights being waived--both that of effective assistance of counsel and the right to control one's own defense as a pro se--Kaczor could violate his duty to Marcusse, freely sabotaging her defense in collaboration with the prosecution team with no repercussions professionally or to the resulting guilty verdicts.

427. Where it was apparent Marcusse would not abandon her intended defense that the bank records would prove she made investments, an evidence spoilation scheme was devised by AUSA's Gezon and Schipper, IRS Agents Flink and Goeman, with the collaboration of Kaczor.

428. When AUSA Gezon asks if the defendants would "stipulate" to the bank records in the bulk exhibits underlying the Rule 1006 summary exhibits, Marcusse conditions, "As long as I can get the statements and wire transfers off the accounts, then I'm

not opposed", to which Judge Bell clarifies, "As long as you can see the records, you mean?" [emphasis added], with Marcusse agreeing, not realizing he meant she would not be allowed to use the documents in her defense (1:04-cr-165, R. 472, TR 630)(See Exh. U-5).

429. It is not until another week goes by, or two weeks into the trial, that Kaczor asks for the bank records to be made available to Marcusse "whether it's over lunch or over a break or --", at which point she interrupts him, "That's not long enough" (Id., R. 478, TR 1762).

430. Kaczor's request came the morning following Agent Flink's testimony the underlying bank records showed a "ponzi scheme", having submitted summary exhibits, GX-170 and GX-171 in support, which were each one page, having made GX#45 from the 7/28/04 detention hearing (See Exh. I-2) into two exhibits making reference to the bulk bank record exhibits purporting to support the allegations being made (Id., R. 477, TR 1691, 1725, 1735).

431. It is at this time that Judge Bell admits he had met privately with the jury and "chit-chatted with them", claiming "you'll find they should be a little happier when they come in here" (Id., R. 478, TR 1763).

432. At lunch time, Judge Bell orders, "the exhibits will remain here for purposes of review", to which AUSA Gezon responds, "Yes" (Id., R. 478, TR 1859)(See Exh. V-5).

433. When Marcusse was brought to the courtroom to review the exhibits, as arranged, the 16 banker boxes of bulk exhibits are not in there (Id., TR 1860)(See Exh. V-5).

434. When court resumes, Kaczor tells Judge Bell, "no records have been provided to her", causing AUSA Gezon to claim they are there and Judge Bell to agree, "they were right here" (Id., TR 1861)(See Exh. V-5).

435. After the jury is excused at the end of the day, Judge Bell chastises Kaczor, telling him, "The exhibits are right down there. See them, Mr. Kaczor?" "They're right down there, and I think Mr. Flink has been here the whole time." "So this is not cat and mouse. It's pretty obvious what we're doing here, and I don't think the jury should be entitled to think that the government's hiding something under a shell somewhere. My understanding is they've been here the whole time...So let me be very clear. I don't want to hear anything like that from you. If I do, I'll stop you, because I think this jury -- there's some integrity to this process, and I think at the time we begin to say someone's hiding something, I get involved at that point because I've represented to them that there's integrity to this process and I intend to enforce that", ordering Marcusse to be brought in the next day to review the records while the court is in recess from the trial for the day [emphasis added](Id., R. 478, TR 1986-88)(See Exh. W-5).

436. What is removed from the trial transcripts by Court Reporter Kevin Gaugier

before their publication three months later is Judge Bell's admittance he "had to lie" to the jury about the records being "right there" because they were coming in at the time, an admittance both Marcusse and Chris Milson in the witness gallery clearly heard.

437. The next morning that trial is convened, on 6/1/05, Judge Bell again meets privately with the jury (Id., R. 513, TR 2035)(See Exh. X-5).

438. While none of the investment accounts are available in the bank and brokerage records Marcusse reviews, she is able to review the bulk exhibits, and AUSA Gezon provides her with copies of the specific wire transfer and bank statement documents she requests.

439. There are no records available from Gurmail Sidhu, SSBT, MLC, or the parent Worldwide bank or brokerage accounts.

440. Under cross, Agent Corcoran admits only selected bank accounts were used to show the jury and did not include the investment accounts (Id., R. 515, TR 2292-93) (See Exh. Z-5).

440. When Marcusse asks Agent Flink how he could show no investments made in his summary exhibits, he eventually and evasively admits that if an investment did not "match" GX-1, he didn't count it, even admitting he "didn't count any of the investments" (Id., R. 513, TR 2052)(See Exh. A-6).

441. GX-1 was the prime bank debenture booklet offering a 10% month interest rate, which was the investment seized on 5/15/99 for the Valley Boyz Investment Club and withdrawn as disclosed in the 6/99 and 10/99 investor newsletters (See ¶¶ 21-25, supra), causing GX-1 to be irrelevant to all 39 mail fraud counts in the indictment ranging in time from 10/21/99 to 3/23/01.

442. There was no discretion for Judge Bell to allow Agent Flink's summary exhibits resting on this unlawful and misleading definition to be submitted into evidence had Marcusse been able to make objections, such as she was able to do at the 7/28/04 detention hearing (See ¶ 144, supra).

443. There was no lawful authority for IRS Agents Flink, Corcoran and Goeman, FBI Agent Moore, and AUSA's Gezon, Schipper and Davis to limit the definition of an investment in this case only to a product they knew to be irrelevant in the absence of evidence tampering (See ¶¶ 97, 125), causing the summary exhibits purporting to prove a "ponzi scheme" to be knowingly false and fabricated evidence, as first conceived in collaboration with the Bosses and their attorney Richard Lobbes in 2002.

444. All of the court-appointed defense attorneys, David Kaczor (Marcusse), Ken DeBoer (Buffin), Anthony Valentine (Flynn), Michael Dunn (Besser), and Don Garthe (Visser), show their collaboration in fixing the outcome of the trial by not objecting to Agent Flink's summary exhibits or moving to strike them after his bizarre and

misleading definition for "investments" is disclosed.

445. Where the indictment describes the product characteristics under "Counts 1-39 (Mail Fraud)", as Marcusse having "access to secret investment opportunities, not available to the general public", with the defendants representing, "Acess Financial Group had connections and access to little known, high-yield investment opportunities in world markets, which were not available to the general public", in which "an investor could choose to leave the program at any time and their principal would be returned in full" (Id., R. 24, 108, ¶¶ 1, 11-12), these characteristics are unique to the prime bank debenture booklet, GX-1.

446. Investments in stocks, initial public offerings ("IPO's"), and futures on margin are not traded in a "secret" market, such as that described in the 10/99 newsletter, GX-33.

447. The returns specified in the indictment as belonging to the "high-yield investment" are those contained in GX-2, the Bahamas 'CD' Trading Program (Id., R. 108, ¶¶ 11, 19), whereas no mention is made in the indictment anywhere of the 10% monthly interest rate quoted in GX-1, the prime bank booklet.

448. The indictment charges investors were deceived where the defendants knew that "(1) the investors' funds had <u>not</u> been placed in a certificate of deposit" [emphasis in original](Id., R. 108, ¶ 21), referring to the Bahamas 'CD' Trading Program (GX-2 or GX-3), <u>not</u> to GX-1, which invested in "Bank Debentures" issued by "Prime Banks", in trading programs "conducted under the specific guidelines set up by the International Chamber of Commerce (I.C.C.)".

449. Agent Moore's Affidavit to the 12/5/03 Criminal Complaint engaged in the <u>same</u> merging of the characteristics of the Bahamas 'CD' Trading Program with GX-1 in its "Summary of Scheme", except rather than calling it a "high-yield invesment", he specifies, "Marcusse represented that she had access to a secret financial opportunity involving what she referred to as 'International Prime Banks'", clearly referring to GX-1 (Id., R. 2, ¶ 8).

450. Attached to the 1/11/13 Declaration filed on 2/11/13 by David Hardy, FBI, in response to Marcusse's FOIA litigation (See ¶ 246, supra), is a report by Det. Crumb, Ottawa County Sheriff's Dept., on 8/31/01, when investigating Marcusse's complaint of the Bosses embezzling investor funds, which states Crumb had gone on 8/14/01 to interview the Bosses, except they had retained attorney Richard Lobbes, who set up an appointment on 8/31/01. When Crumb meets with the Bosses and Lobbes on 8/31/01, Diane Boss "states they would then take their [the investors'] money, promise them a 10% return per month"(1:12-cv-1025, R. 25-4, p. 188)(See Exh. B-6), making reference to the GX-1 product only.

451. Just the month before, in GX-59a, the transcript of a recording made under

the direction of Agent Moore on 7/6/01 by "cooperative witness" Sue Jager and her husband, Glen, of their conversation with Wes and Diane Boss without the Boss's knowledge, Diane Boss admits that while Diane was dating Wes,[7] Marcusse "changed the program", emailing Diane "this letter saying the ten percent program was no longer going to be there" (Side One, Tape One, p. 10). Diane Boss also admits that while Marcusse wrote the newsletters, Diane "fine tune[s] them", admitting she changed them (Id.). Diane Boss further admits, "She [Marcusse] never puts Access Group on it, on her letters" (Id., p. 13), thereby admitting the main entity was Sanctuary Ministries. Wes Boss talks about having the office for Access at home because "[p]art of it was the idea of why pay overhead you don't need to pay" (Id., p. 17). Diane Boss admits, "you cannot promise in this type of thing... They cannot promise you that you are gonna make what they think you're gonna make on this. They can say I think you will and that's why", to which Glen Jager agrees, "And the stock market is like this, you know", admitting they all knew the investments were trading in the stock market (Tape One, Side Two, p. 10). Diane Boss admits she had permission from Marcusse to pay her "gas, electric and phone", mentioning nothing else (Id., p. 37).

452. At trial, when asked by AUSA Gezon, investor Glen Jager does not recognize GX-1 (Id., R. 476, TR 1450). According to GX-80, Jager first invests on 10/15/99.

453. GX-59a is not submitted by AUSA's Gezon and Schipper for evidence at trial.

454. Kaczor does not permit Marcusse to cross examine Glen Jager.

455. On 1/9/13, in the FOIA litigation, IRS Agent Corcoran provides the government's trial exhibits to Marcusse, after years of requesting these documents including from the Michigan court. They consisted of 10,960 pages of documents, which for the first time are Bates stamped, a precaution against fraud not afforded Marcusse at the 2005 trial.

456. When reviewing the documents provided by Agent Corcoran, Marcusse discovers that Tape One, Side One of GX-59a is missing, which showed Agent Moore's involvement and Diane's admittance that the GX-1 prime bank ten percent program had been discontinued before the Bosses were married in 12/99, causing Marcusse to file a motion with Judge Kollar-Kotelly in the District of Columbia, who orders a supplemental response (1:12-cv-1025, R. 38).

457. In his 9/25/13 Supplemental Declaration, Agent Corcoran attests Marcusse's "failure to receive the first third pages of government exhibit 59a from the IRS was attributable to the fact that the IRS did not receive those pages in the set of government trial exhibits from the U.S. Attorney's Office in Grand Rapids" (Id.,

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7 The 12/20/99 newsletter, GX-34, advises "Wes Boss and Diane DeWeerd were married on December 11, 1999", and "will be running Access Financial Group together."

R. 41-1, p. 4), attaching a complete copy of GX-59a (See Exh. C-6, p. 1).

458. In the "Application and Affidavit for Search Warrant" obtained by Agent Moore on 12/18/01, which is filed with Hardy's Declaration on 2/11/13, Paragraph 36 states, "Wes Boss told Source 2 that he had enough dirt on Janet Marcusse to send her to prison for life. This comment was made by Wes shortly after he discovered that the July, 2001 newsletter had been distributed to investors and had accused him and Diane of embezzling over one million dollars from Access Financial" (Id., R. 25-3, p. 186, 196)(See Exh. D-6).

459. Both Det. Crumb and Agent Moore testify at trial, except these documents are withheld to prevent proper impeachment, which was contrary to the pretrial promises under the signatures of AUSA's Gezon and Schipper and U.S. Attorney Chiara to provide the "FBI Form 302's", including even those "not subject to disclosure" (See ¶ 299, supra)(See Exh. H-4).

460. *During her defense, Marcusse testifies* to $13,074,030 in legitimate investments made under the investor contracts granting her the discretion over the choice of investments, with sufficient profits having accrued in the Bahamas program to cover the investors' principal, which was left in the SSBT account to compound.[8]

461. Whenever Kaczor tries to submit her summary exhibits and/or bank record documents in support, he is obstructed by AUSA Gezon or Schipper, objecting on behalf of IRS Agents Flink and Goeman, that the documents did not originate from the bulk exhibits with the collaboration of Kaczor agreeing to "delete" the evidence.

462. In regards to the summary exhibit for the Bahamas program, Def. Exh. M-AA (See Exh. E-6), and its wire transfers in support, AUSA Schipper objects, "it did not come -- he points to these boxes. It did not come from these boxes" [referring to the bulk bank record exhibits stacked in front of the jury], causing the summary exhibit to be admitted by Judge Bell as Marcusse's "work product" only (Id., R. 518, TR 3056-57)(See Exh. F-6), as evidence of the $4,226,000 invested.

463. In regards to the $1,861,330 invested with Winfield Moon, owner of Worldwide E Capital, Kaczor submits bank statements from February and March, 2001 from Wells Fargo Bank, except AUSA Schipper objects, "Mr. Kaczor gave me last night Bulk Exhibit 219 with the attachments, and there are several pages that aren't from our

8 Marcusse testifies to $4,226,000 in transfers made for Suisse Security Bank & Trust ("SSBT") Bahamas (CD) stock trading program (Id., R. 518, TR 3040-36, 3049-68, 3084-85); $1,861,330 in transfers made for Worldwide E Capital, LLC ("Worldwide") (Id., R. 519, TR 3139-43); $2 million to MLC Development Int'l, Inc. (Id., R. 519, TR 3111, 3120-22, 3140-42); $4,186,700 in transfers for Crawford Ltd. (Id., R. 519, TR 3125-27, 3155-56); $400,000 to Valley Boyz Investment Club (Id., R. 518, TR 3069); and $400,000 in a real estate project being developed by Mike Carney of MLC for sale to the Oneida Tribe in Green Bay, Wisconsin for a casino (Id., R. 518, TR 3104, Marcusse; TR 2976-79, 2983-84, Flynn).

records at all. So this is not a copy of Bulk Exhibit 219 and the attached documents" (Id., R. 519, TR 3140-43)(See Exh. G-6).

464. The February and March, 2001 Worldwide bank records Marcusse wanted submitted show a 3/12/01 transfer of $200,000 and a 3/14/01 transfer of $500,000 (See Exh. H-6), or $700,000 from which $600,000 is arbitrarily carved out and attributed to her unreported "income" by IRS Agents Flink and Goeman (Id., R. 515, TR 2337-40, 2378-80, Agent Goeman; R. 513, TR 2098, Agent Flink).

465. Winfield Moon as the owner of Worldwide had opened a sub account for Marcusse to move funds, as shown in GX-219a, the account application (See Exh. I-6).

466. As Marcusse testifies at trial, Page 2 of the Business Account Application is missing (Id., R. 519, TR 3140)(See Exh. G-6), which would have shown Moon's ownership of Worldwide, as it is his address and telephone number listed (See Exh. I-6).

467. At trial, the top of GX-219a shows it was "Page 1/3" of a facsimile on 2/24/04 before the indictment was obtained (See Exh. I-6).

468. The Business Account Application for Crawford & Associates, LLC, opened with the same bank officer at Wells Fargo, Maria Lorenzo, GX-241, consisted of 2 pages entered as GX-241a, and the "Consumer Account Application" and "Certificate of Authority" entered as GX-241b.

469. The Worldwide bank records Marcusse wanted submitted included withdrawals signed by her to go directly into Moon's account, listing his account number and bearing Moon's signature on a receipt, including one for $800,000 on 3/15/01 moving the $700,000 to Moon for investment, which included the same $600,000 that was unlawfully made unreported income to Marcusse by their crazy definition of investments.

470. IRS Agents Flink and Goeman testify Marcusse obtained $936,626 in unreported income from investor deposits in tax years 1999, 2000 and 2001, including the $600,000 transferred to Worldwide E Capital (Id., R. 478, TR 1923, Agent Flink; R. 515, TR 2337-40, Agent Goeman).

471. No list of checks, dates, payors, payees, or amounts is provided to properly rebut this allegation.

472. Failure to file an individual income tax return is not charged in the indictment.

473. Agent Goeman submits 6-line substitute returns for tax years 1999, 2000 and 2001, GX-149, GX-150, and GX-151, respectively (Id., R. 515, TR 2337-40).

474. In tax year 1998, Agent Goeman submits GX-148 in which she shows an income of $6,744, which she testifies was too little money to have been required to file an income tax return (Id., R. 515, TR 2336-37).

475. Under cross, Agent Flink admits that he had testified "in front of the grand jury trying to explain why [Marcusse] had gotten so little money", after which he adds the $600,000 that was transferred to Worldwide (Id., R. 513, TR 2098)(See Exh. J-6).

476. After a recess, and without verifying the documents with Wells Fargo Bank or conferring with Marcusse, Kaczor advises Judge Bell, "I had some documents that appeared not to come from the bulk exhibit [219] so I've deleted those" (Id., R. 519, TR 3163)(See Exh. K-6).

477. This "deleted" evidence allows for AUSA Schipper not only to keep intact the $600,000 as unreported "income", but to misrepresent the underlying bank records by inferring Marcusse gambled the funds away where he asks her, "That wasn't a gift to you while you were in Las Vegas to spend from the church?" Marcusse responds, "Did I testify that it was? I testified that I invested it. And you're keeping out part of the bank records that show that" (Id., R. 519, TR 3209)(See Exh. L-6).

478. AUSA Schipper is so angry that Marcusse refused to answer his questions with only a "yes" or "no" that Judge Bell calls a break, telling him, "Mr. Schipper, no more of this. Take a breath of fresh air, walk around along [sic] bit, get some perspective, come back here and ask some more direct questions" (Id., R. 519, TR 3210)(See Exh. L-6).

479. Judge Bell orders Marcusse to "give him a yes or no. Anything more hurts you in front of this jury" (Id., R. 519, TR 3210)(See Exh. L-6).

480. Common sense would suggest that a normal member of the public in a jury would assume guilt is the reason Marcusse was unable to present any bank record documents out of the 16 banker boxes full stacked in front of them in support of her testimony to $13 million in investments made, particularly when the prosecutor's objections to those documents being submitted were accompanied by her own attorney's acquiesence to deleting them, thereby inferring she had fabricated them to support perjury.

481. Common sense would suggest that, in light of the fraudulent scheme perpetrated against Marcusse to hobble her defense with "hybrid representation" (See ¶ 414, supra), where she is restricted to a simple "yes" or "no" in a "ponzi scheme" trial in which her own attorney is agreeing to "delete" legitimate bank records proving her innocence in a defense she was supposed to be in "control", is just another scam designed to cause the waiver of any issue raised on appeal regarding an unfair trial in which she was denied the use of admitted bank record documents.

483. AUSA Schipper's cross examination of defense witness Dan Hammond before Marcusse's testimony shows Schipper knew at that time the Worldwide bank records would not be admitted into evidence where Schipper asks Hammond, "You have no idea if Jan took that money, that two, three hundred thousand dollars in Vegas and had a huge party, do you?", to which Hammond, who was not present in Las Vegas at the time, responds, "I have no idea" (Id., R. 517, TR 2704)(See Exh. M-6).

484. It was AUSA's Gezon and Schipper, and IRS Agents Flink, Corcoran and Goeman's theory of prosecution that Marcusse believed her "income" wasn't taxable because

it was a "gift" from the "church" (Id., R. 296, 5/4/05 Government's Proposed Jury Instructions filed pretrial).

485. It was Marcusse's defense that the amounts attributed to her were not "income", but investments made on behalf of the investors under a signed contract, as she stated the evidence would prove in her opening statement (Id., R. 470, TR 81)(See Exh. J-5)(See ¶ 393, supra), except she was not permitted to use the bank records to prove it.

486. When she was not permitted, as a purported pro se defendant, to attend the jury instruction conference after both the government and Kaczor rested their cases, Marcusse files a written objection to the Government's Supplemental jury instruction as "inaccurate and misleading" (Id., R. 418-1, p. 1; R. 418-2, p. 4)(See Exh. N-6).

487. In spite of Judge Bell's admittance that he "can't give it", because no defendant had "taken the witness stand to articulate it" (Id., R. 520, TR 3470), the Government's Supplemental Jury Instruction was given as the theory of defense in the jury instructions (Id., R. 522, TR 3772-73)(See Exh. O-6), after court appointed defense attorney Don Garthe for Jeff Visser requests it at the conference (Id., R. 520, TR 3463).

488. This instruction produces the necessary means to support a **Klein** conspiracy,[9] where in the §2255, Judge Bell copies AUSA McManus's and U.S. Attorney Davis's Response (1:09-cv-913, R. 59, p. 87), arguing "the failure to file tax returns more than qualifies as a sufficient 'overt act' in furtherance of a **Klein** conspiracy" (Id., R. 77, p. 51)(See Exh. P-6).

489. In the Complaint filed in U.S. Tax Court in Docket 14234-09 for a redetermination of <u>all</u> of the $936,626 attributed in unreported "income" to her from the 2005 criminal trial, <u>none</u> of Marcusse's issues raise the argument the funds were "wages" or "income", but not taxable to her because they were "gifts" from the "church" (See ¶¶ 373-74, supra).

490. In the Presentence Report ("PSR"), it is falsely represented that Worldwide was "owned" by Marcusse (¶ 138).

491. Marcusse is not permitted to rebut the PSR with written objections where she is moved from one jail to another the next morning following her taking a general "exception" to the entire PSR for fraud, and her legal papers confiscated, causing an objection to be filed by Chris Milson on her behalf advising she had been refused access to her property (Id., R. 509).

492. In support of Marcusse's testimony to $4,186,700 in transfers for investment for Crawford Ltd., her summary exhibit, Def. Exh. M-Z, is submitted showing 91

9 **United States v. Klein**, 247 F 2d 908 (CA2 1957).

transactions, out of which 57 transactions were reflected on government exhibits, GX-98, 98a, 99 and 99a, as noted on the face of Def. Exh. M-Z (Id., R. 519, TR 3125-27).

493. AUSA Schipper objects to the entry of Def. Exh. M-Z, admitting some of the numbers come from the government's own documents, but averring that "at least half of them come from we don't know where", causing Judge Bell to deny admission (Id., R. 519, TR 3126-27)(See Exh. Q-6).

494. The remaining 34 transactions included 9 transactions that had been omitted from GX-98a, but inexplicably were included on GX-99; 2 transactions that had been conducted through SSBT in the Bahamas; and 23 transactions that could have been verified by bank statements in the bulk bank record exhibits, except when Marcusse tries to correct AUSA Schipper's misrepresentations that only a "small portion" of Def. Exh. M-Z came from government sources, Judge Bell interrupts her to deny admission (Id., R. 519, TR 3126)(See Exh. Q-6).

495. The bank records seized from attorney Gurmail Sidhu were not included in the bulk bank record exhibits to show the transfers made to MLC, nor were the bank accounts of Tom Wilkinson's Access Global, LLC or Mass Ministries.

496. In redirect, Kaczor asks Marcusse if she sees Suisse Security Bank & Trust listed on IRS Agent Flink's summary exhibit, GX-170, to which she responds, "No, I do not" (Id., R. 519, TR 3338).

497. Out of the $13 million in investments to which Marcusse testified, AUSA's Gezon and Schipper, IRS Agents Flink and Goeman, in collaboration with Kaczor controlling her defense, only allow two pages of bank records to be entered into evidence, which show $660,000 of the $1,861,330 invested with Winfield Moon in Worldwide. This $660,000 is derived from a Bank of America account, which was labeled GX-203. Right after Kaczor agrees to "delete" the Wells Fargo bank statements for Worldwide from GX-219, he states, "I have two documents that are Mrs. Marcusse's copy of the same documents that are in 203" (Id., R. 519, TR 3164)(See Exh. K-6).

498. AUSA Schipper does not object, and instead only conditions that, "I don't think they can come in as part of Bulk Exhibit 203 because they're not part of Bulk Exhibit 203", describing the documents as "parallel to two of the records within 203" [emphasis added](Id., R. 519, TR 3164-65)(See Exh. K-6).

499. The two documents are the two-page 3/31/01 statement from Bank of America, which is admitted as Def. Exh. M-BB (See Exh. R-6).

500. In that Bank of America statement from GX-203, there are no receipts or withdrawals that could prove Winfield Moon received the funds into investment, as was available in the Worldwide documents from Wells Fargo in the absence of having Moon appear to testify and bring his bank records from Bank of America.

501. During her testimony to $13 million in investments made, Kaczor submits only 8 exhibits in support, admitting she had given him "reams" of documents, but he had "weeded out all the ones that I as an officer of the Court believe cannot be admitted", as based upon AUSA Gezon's objection the government had not seen them before (Id., R. 518, TR 3047-49)(See Exh. S-6).

502. At the 5/5/05 pretrial conference, when Buffin asks if defense exhibits should be presented at that time, Judge Bell tells him that it is not done until after the trial begins, specifically holding, "after the government rests its case you would have an opportunity to present evidence on your own behalf if you wished. At that time your exhibits could be marked." When Buffin clarifies, "You don't need to see those ahead of time?", Judge Bell holds, "I don't need to see them ahead of time. You can keep them. In fact, as the trial goes on, you may wish to take some out and put some back in your pile depending on what you think is going on here" (Id., R. 651, TR 29-30).

503. During Marcusse's testimony, AUSA Gezon also objects she should have been required to bring in the "bankers to show that these were legitimate records", e.g., "It claims to be bank records from the Bahamas" (Id., R. 518, TR 3048)(See Exh. S-6).

504. AUSA Gezon also had cause to know that Judge Bell had previously denied Marcusse's request for Raymond Winder, the Provisional Liquidator of SSBT, and Christopher Lunn, its CEO and a former regulator with the Central Bank of the Bahamas (Id., R. 392-1, p. 10; R. 401, p. 4; R. 422-4, p. 5)(See Exh. E, Q-5).

504. While Marcusse testifies over two days, 6/9 and 6/10/05, as soon as she sees Kaczor's collaboration in withholding her evidence of innocence from the jury, she gathers what extra copies she has available of the bank records and other documents, as she had given her evidence to Kaczor, and gives the documents to Milson to file in "evidence packs" with the Clerk Ronald Weston (Id., R. 414, 415)(See Exh. T-6).

505. Clerk Ronald Weston is requested to "certify" the "evidence packs" that had been filed on 6/9/05, which is done on 6/13/05, and refile them, which is done on 6/14/05 (Id., R. 422-2, p. 1)(See Exh. T-6), and under Fed. Rules of Evidence 902, subsection 4, Marcusse requests Judge Bell to give them to the jury (Id., R. 422-1, p. 1)(See Exh. U-6)(Id., R. 520, TR 3348)(See Exh. V-6).

506. Incredibly, it is David Kaczor who advises Judge Bell that "I don't think the rules of evidence would allow their admission and I've explained that to her, and what she's attempted to do is by filing them with the Court downstairs, she believes that because they've been filed, they're certified copies that should be allowed into evidence, and I was trying to explain to her that's not the -- just not the proper rule of evidence" (Id., R. 520, TR 3348-49)(See Exh. V-6).

507. Judge Bell declines to rule until he has reviewed the documents (Id., R. 520,

TR 3349)(See Exh. V-6).

508. The "evidence packs" include some of the wire transfers shown on Def. Exh. M-AA (See ¶ 462, supra)(Exh. E-6), such as the $300,000 wire transfer to SSBT on 7/13/99 (Id., R. 422-2, p. 42)(See Exh. W-6).

509. When throughout the entire next day in court, which consisted of closing arguments, Judge Bell does not mention Marcusse's "evidence packs", at the end of the day she asks again about them, whereupon Judge Bell denies them for lack of a proper custodian, as irrelevant, and because they might confuse the jury, making no mention of the bank record documents contained in them (Id., R. 521, TR 3678-82).

510. In rebuttal closing arguments, AUSA Gezon refers to the large garbage bag full of papers Marcusse kept between her legs underneath the table (See ¶ 401, supra), when referring to the Bahamas program, "See if there's one single bank statement in there. There's nothing. There's a bank brochure, a glossy thing you can pick up in a bank in the Bahamas, and one thing that's not signed by anybody and it says, 'Dear Client.' It doesn't have her name on it, doesn't have an account number on it, doesn't have anybody's name on it. Something she could have gotten off the Internet" [emphasis added](Id., R. 522, TR 3721)(See Exh. Y-6).

511. Contrary to AUSA Gezon's representations, the 11/11/02 letter from Raymond Winder, Provisional Liquidator of SSBT, which was submitted as Def. Exh. M-Q, shows Besser's name and fax number on it, and as shown from the "evidence packs", it also has a date stamp of "11/16/2002, 15:56" from "Suisse Security Bank", their fax number, and is signed on page 4 (Id., R. 422-5, p. 1-4)(See Exh. X-6).

512. While Kaczor submitted a brochure from SSBT as Def. Exh. M-P, he removes the page showing its accounts had SIPC (Securities Investors Protection Act) Insurance and additional coverage "without limit" through Asset Guaranty Insurance Company, and the page showing "Charges & Rates" effective as of 1/11/99, before submitting the exhibit.

513. The "evidence packs" included the missing SIPC insurance page (Id., R. 422-2, p. 2), and the "Charges & Rates Schedule" dated 1/11/99 (Id., R. 422-2, p. 3)(See Exh. L).

514. On direct appeal, Marcusse raises as Issue IV in her pro se supplemental brief that she had been denied the use of the underlying source documents to the IRS Rule 1006 summary exhibits in Case No. 05-2586, except the brief is "declined" consideration, which allows Judges William Bertelsman, John Rogers and Jeffrey Sutton to deny court-apppointed counsel Melvin Houston's Issue I that there was insufficient evidence by finding, "[t]he evidence showed that neither Marcusse nor any of the other defendants ever actually invested the victims' money. Rather, in keeping with a classic Ponzi scheme, investors were paid 'returns' on their principal from money

invested by subsequent victims, and monies not so paid were diverted by defendants for their own personal use." **United States v. Flynn**, 265 Fed Appx. 434, 443 (CA6 2008).

515. During the pending §2255, on 10/19/12, AUSA Jenny Knopinski files a second extension of time in the FOIA litigation in the District of Columbia stating that, after 3 years of the IRS denying that they had "responsive" documents, or since 5/12/09, before the §2255 was filed on 10/2/09, the CI Division of the IRS in Grand Rapids, Michigan had "located" 60 boxes containing 120,000 pages of documents, including the bulk bank record exhibits (1:12-cv-1025, R. 15)(See Exh. Z-6).

516. The same day AUSA Knopinski's motion was served, 10/31/12, is the same day Marcusse was served with the 10/26/12 denial by Judge Bell of her §2255 motion to vacate, including of Ground Five, resubmitting the issue from direct appeal that she had been denied the use of the bank records in her defense.

517. Holding the 5/14/09 Order of the Sixth Circuit in contempt (See ¶ 421, supra) (Exh. T-5), which purported to preserve those pro se issues raised on direct appeal for resubmission in a §2255 motion, in the 10/14/11 Response by AUSA McManus and U.S. Attorney Davis, it is argued Marcusse procedurally defaulted this claim at trial (1:09-cv-913, R. 59, p. 43), disregarding her "evidence packs".

518. In his 10/26/12 Opinion denying relief on Ground Five, Judge Bell copies the Government's Response in which it is argued, "transcript pages 3141-42 address documents Marcusse attempted to portray as having been taken from Government Bulk Exhibit 219, which Attorney Kaczor was later forced to acknowledge did <u>not</u> come from that exhibit" agreeing to delete them (Id., R. 59, p. 45-46; R. 77, p. 18).

519. In his 10/26/12 Opinion denying relief on Ground Five, Judge Bell does not copy the Government's Response where AUSA McManus and US Attorney Davis aver, "She had access to every bank record the Government had" (Id., R. 59, p. 48; R. 77, p. 20).

519. In his 2/2/13 Declaration, IRS Agent Corcoran admits he had been assigned as an "agent of the Grand Jury" (¶3), and that after the 2005 trial, the AUSA handling the criminal case "ceded custody of these documents which amount to 61 boxes" (¶ 6) (1:12-cv-1025, R. 25-9, p. 2-3)(See Exh. V-3).

520. According to Agent Corcoran's 2/2/13 Declaration, 32 boxes of the 54 boxes which continue to be <u>withheld</u> to the present day contain bank records that do <u>not</u> support the government's theory of the case (Id., R. 25-9, p. 8-9)(See Exh. V-6).[10]

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10 Paragraph 16, p. 8; Box 1, ¶17(a), p. 8; Box 2, ¶ 18(a), p. 9-10; Box 5, ¶ 21(b), p. 15; Box 6, ¶ 22(d), p. 17; Box 9, ¶ 25(a), p. 22; Box 10, ¶ 26(a), p. 22; Box 11, ¶ 27(a), p. 26; Box 13, ¶ 29(d), (e), p. 28-30; Box 14, ¶ 30(d), p. 31; Box 15, ¶ 31 (c), p. 33-34; Box 17, ¶ 33(b), p. 37; Box 19, ¶ 35(a), p. 38-39; Box 20, ¶ 36(a), p. 39; Box 27, ¶ 43(b), p. 47; Box 30, ¶ 46(a), p. 53; Box 31, ¶ 47(d), p. 55; Box 32, ¶ 48(b), p. 57; Box 33, ¶ 49(b), p. 59; Box 35, ¶ 51(a), p. 63: Box 36, ¶ 52(a), p. 63; Box 37, ¶ 53(a), p. 64; Box 38, ¶ 54(b), p. 66; Box 39, ¶ 55(b), p. 69; Box 40, ¶ 56(a), p. 70; Box 44, ¶ 60(a), p. 77; Box 45, ¶ 61(d), p. 79; Box 46, ¶ 62(a),

521. On 1/9/13, when Marcusse receives service of 10,960 pages of documents from the FOIA litigation, including government trial exhibits and the contents of the bulk bank record exhibits, she discovers an evidence spoilation scheme had been perpetrated against her at the 2005 trial with the bank record documents to keep the proof of investments made out of defense evidence to invent support for a "ponzi scheme" finding afterwards, as the "ponzi scheme" as an "element" was removed from jury deliberation.

522. A comparison of the National City Bank 7/13/99 wire transfer of $300,000 to SSBT, which was submitted in support of Def. Exh. M-AA to show investments in the Bahamas program (See ¶ 462), but rejected, including in the "evidence packs" (1:04-cr-165, R. 422-2, p. 42)(See Exh. W-6), for example, with the Bates stamped document "7388" of the same date, shows the same $300,000 wire transfer to SSBT on 7/13/99 (See Exh. A-7).

523. The only difference between the two wire transfer documents dated 7/13/99 is that the wire transfer document given to Marcusse by AUSA Gezon to use as evidence at trial was an original document copy, containing the logo of National City, its "terms and conditions", and the signatures of George T. Besser as "customer" and Daria Puluch, the bank officer conducting the transaction, whereas the document provided by Agent Corcoran on 1/9/13 was the one provided on 11/23/01 by the bank under subpoena in the investigation.

524. The bank record documents not provided until 1/9/13 prove transfers were made for the Bahamas program at SSBT.

525. AUSA Gezon's rebuttal closing argument where he falsely states to the jury that there was "nothing", no bank records, to show investments made in the Bahamas program is not evidence, whereas Marcusse's Def. Exh. M-AA showing $4,226,000 in transfers made for the Bahamas program is legitimate evidence establishing the program was promised and investments were made in it.

526. Likewise, the bank records from Wells Fargo Bank for Worldwide that Marcusse tried unsuccessfully to have admitted, both to prove $1,861,330 invested and to prove the $600,000 was not unreported "income" as it was invested, by Kaczor agreeing to "delete" them (See ¶¶ 463-64, 476, supra), are the original bank records, whereas the Bates stamped records, "9773", "9774", "9775", "9776", "9777", and "9780", are identical other than not containing the bank's logo (See Exh. B-7).

527. The bank record documents not provided until 1/9/13 prove Marcusse did not personally benefit from any funds transferred to the Worldwide sub account before they were promptly transferred to Winfield Moon for investment.

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10 (Cont.) p. 80; Box 47, ¶ 63(a), p. 80; Box 48, ¶ 64(a), p. 81; Box 50, ¶ 66(a), p. 83, Box 51, ¶ 67(c), p. 84; Box 52, ¶ 68(a), p. 86; all of which contain references to bank records withheld from discovery at the 2005 trial to the present day.

528. The bank record documents not provided by Agent Corcoran until 1/9/13 prove that AUSA's Gezon and Schipper, IRS Agents Flink, Corcoran and Goeman, defense attorney David Kaczor, and Judge Bell all knew of this evidence spoilation scheme at trial where the original 3/31/01 bank statement from Bank of America is submitted as a "parallel" document to bulk exhibit 203 (See Exh. R-6) by Kaczor, but as AUSA Schipper conditions, "they're not part of bulk exhibit 203" (See ¶¶ 497-99, supra), where here again the Bates stamped 3/31/01 statement, "1880" and "1881", differs from the original only in that the Bank of America logo is not on it (See Exh. C-7).
529. Judge Bell's knowledge of and collaboration in the spoilation scheme is demonstrated by his ruling denying the "evidence packs" for reasons of custody (See ¶ 509, supra), which at the time Marcusse did not understand how that could be possible where she was the alleged "owner" of the company and therefore the logical custodian of its records, whereas the Boss's cleaning lady, Julie Siemen, had been allowed to submit "Access Business Records" into evidence (See ¶¶ 331, 334, supra).
530. Defense attorney David Kaczor's knowledge and collaboration in the spoilation scheme is apparent where he withholds "reams" of documents from evidence, "deletes" legitimate bank records, and even argues against Marcusse's best interests to place on the record her "evidence packs" should not be admitted (See ¶¶ 497, 501, 506, supra).
531. Where Agent Flink admits he had custody of the original bank records, as given to him from the Bosses (See ¶ 363, supra), the prosecution team could not afford to allow Marcusse access to review and copy documents from the bulk exhibits (See ¶¶ 432-38, supra), until the bank records provided by the banks under subpoena could be removed and replaced with the original bank records, further explaining the "protective" order placed on the government's trial exhibits pretrial against the pro se defendants only (See ¶ 297, supra), suggesting all of the court-appointed defense attorneys were aware of this fraudulent evidence spoilation scheme as no limitations were placed on their access to such materials.
532. In addition to the deliberate spoilation of evidence for Marcusse to use bank records to prove innocence to a classic "ponzi scheme" allegation, AUSA's Gezon, Schipper and Davis, Agent Moore, and IRS Agents Flink, Corcoran and Goeman also utilized an evidence tampering or falsification scheme to misrepresent the nature of the investments being promised as a prime bank debenture relevant to the 39 mail fraud counts in the indictment.
533. In his opening argument, AUSA Schipper states "the testimony will be the defendants...[were] using prime banks", and the defendants told investors "my money is in a blocked bank account or a guaranteed bank account or it's in a world bank backed by a CD, but that the money is safe", the "rate of return" would be "three

percent to ten percent a month", terms like "bank debenture, high yield investment program" will be used, and "there were top secret investments" (Id., R. 470, TR 42-43, 50)(See Exh. I-5).

534. Marcusse is not permitted by Kaczor to cross examine any of the government's first 18 witnesses, all of which were investors, during which time 45 exhibits were being admitted into evidence, some of which had been tampered with and were key to the government's case, such as GX-1, GX-3, GX-31, and GX-33, to allow AUSA's Gezon and Schipper to misrepresent the product promised investors by means of testifying through cross examination and in rebuttal closing arguments, neither being a legitimate means to place actual evidence on the record to support criminal convictions.

535. Kaczor does not object to these exhibits, nor was Marcusse granted permission by Judge Bell to make objections (See ¶¶ 364, 378, 412-414, supra).

536. Whereas Marcusse objected to the entry of GX#2, the prime bank debenture booklet, as irrelevant to investor Richard Weaver at the 7/28/04 detention hearing (Id., R. 178, TR 19)(See ¶ 144, supra), where she could not make objections in front of the jury at trial, the exhibit, now GX-1, is entered into evidence during investor Paul Stinger's testimony by AUSA Gezon (Id., R. 470, TR 92).

537. GX-1 at trial is different from the GX#2 at the detention hearing, demonstrating evidence tampering and falsification, where the investment contract containing the terms, "High Yield Trading Programs", "International Chamber of Commerce (I.C.C.)", and "Arbitration", are removed and replaced with the stock trading contract used with the Bahamas trading program and other non-prime-bank investments.

538. While Stinger testifies he saw GX-1 when he first considered investing, he admits he did not invest until a year later, which was in January, 2000 (Id., R. 470, TR 92, 108), causing GX-1 to be irrelevant to him as it had been withdrawn in 6/99. Where Stinger admits Marcusse talked to him about investing and GX-1 is submitted before AUSA Gezon introduces the **Faretta** issue at page 137 (See ¶ 407, supra), it cannot be disputed that when Kaczor requests "hybrid representation" on page 140, he specifically words the request to allow Marcusse to cross examine witnesses as one "after" the "next witness", meaning after Stinger, to obstruct her from being able to cross examine him (See ¶ 412, supra); nor can it be disputed she had no right to object to the entry of GX-1 into evidence as it was already admitted.

539. Tampering with and falsification of GX-1 can be proven by comparing it to Agent Moore's Attachment B to his 12/5/03 Affidavit to his Criminal Complaint, which was the correct contract contained in that otherwise identical prime bank booklet (Id,. R. 2, Att. B).

540. Exhibits I, J, M, N, O, and P to Marcusse's 4/6/10 First Amended and Supplemental Memorandum in Support to the §2255 motion include the actual signed contracts

to prove the "High Yield Trading Programs" contract was used prior to the 5/15/99 Valley Boyz seizure of funds and the "private placement" contract for the Bahamas program and other diversifications was used afterwards (1:09-cv-913, R. 22)(See Exh. D-7).

541. One exhibit in the 4/6/10 supplemental pleading included investor Timothy Bannister's "High Yield Trading Programs" contract dated 5/4/99 as Exh. J (See Exh. E-7), whereas investor Richard Weaver's contract dated 9/13/99 shows the "private placement" contract for the Bahamas stock program as Exh. M (See Exh. F-7), and Exh. P shows investor Paul Stinger on 10/14/99 signing the "private placement" contract (See Exh. G-7), establishing neither Weaver nor Stinger were promised nor placed in the GX-1 product.

542. As an investor on 5/4/99, Tim Bannister would have received written notice from the 6/99 and 10/99 newsletters, GX-31 and GX-33, advising him the bank debenture product in GX-1 had been withdrawn and replaced with a stock program.

543. By switching the investment contracts in GX-1 for the trial, the prosecution team of AUSA's Gezon, Schipper and Davis, IRS Agents Flink, Corcoran, Goeman, and Boerman, and FBI Agent Moore, fabricate the evidence to show GX-1 was being used during the 39 mail fraud counts, ranging in time from 10/21/99 to 3/23/01, by submitting the evidence of GX-63b that investor Jeff Borremans had signed the contract contained in GX-1 on 7/6/01 (See Exh. H-7).

544. By switching the investment contracts in GX-1 for the trial, the prosecution team of AUSA's Gezon, Schipper and Davis, IRS Agents Flink, Corcoran, Goeman, and Boerman, and FBI Agent Moore, fabricate the evidence to show GX-1 was being used after 6/99 further invented the evidence of "intent" from a purported violation of the "notice" provided of prime bank investment fraud from the Valley Boyz seizure per the Settlement Stipulation, GX-380 on 5/15/99 (See Exh. I).

545. Switching the investment contracts in GX-1 for the trial also permitted the prosecution team of AUSA's Gezon, Schipper and Davis, IRS Agents Flink, Corcoran, Goeman, and Boerman, and FBI Agent Moore, to evade the mandatory arbitration clause contained in the correct GX-1 contract.

546. Evidence tampering or falsification with the investor contract in GX-1 was planned by the prosecution team of AUSA's Gezon, Schipper, and Davis, IRS Agents Flink, Goeman and Boerman, and FBI Agent Moore, prior to obtaining the 7/29/04 indictment and prior to the filing of Agent Moore's 12/5/03 Affidavit and Criminal Complaint where the characteristics of GX-1, the prime bank program, and GX-33, the Bahamas program are merged to falsely represent GX-1 was being used past 6/99 (See ¶¶ 125, 445-449, supra).

547. During the direct appeal, Marcusse objects to evidence tampering and falsifi-

cation that occurred with the government's trial exhibits in her pro se brief, and in a pro se Motion under Fed. R. Appel. Proc. 10(b)(2) and (e)(2), she objects to the certification by Judge Bell of tampered-with and falsified exhibits for the appeal, which was filed in the Sixth Circuit on 6/22/07 in Case No. 05-2586, because Marcusse was barred from filing any pleadings in the district court.

548. The Sixth Circuit disregards the FRAP Rule 10 motion on appeal, and Issue I raising the specific instances of evidence tampering and falsification to show insufficient evidence to support convictions in the pro se brief is "declined" consideration (See Exh. T-5, p. 3).

549. In the 4/6/10 supplemental memorandum to the §2255, Marcusse explains why she was unable to submit the exhibits previously in support of Ground Three claims of evidence tampering and falsification to misrepresent the nature of the investments promised, which was she did not have a copy of GX-1 where Magistrate Scoville rejected her request for copies of trial exhibits from filing during appeal (1:04-cr-165, R. 660), Judge Bell denies her motion for discovery in the §2255 (1:09-cv-913, R. 9), and it is not until she files a motion for production of documents in the pending U.S. Tax Court litigation that IRS attorney Andrew Stroot provides her with copies of trial exhibits, GX-1, GX-31 and GX-33 on 3/10/10 (See Exh. D-7). This was after the deadline imposed by Judge Bell for her §2255 Memorandum in Support of 2/7/10 (Id., R. 9).

550. On 3/8/11, almost a year later, but before the government is ordered to respond, Judge Bell denies leave to file the 4/6/10 Supplemental Memorandum and its exhibits (Id., R. 35), allowing the evidence of the investor contracts being switched in GX-1 to establish evidence tampering with it to be evaded to deny relief.

551. In the Government's 10/14/11 Response to Ground Three of the §2255, under the signature of AUSA McManus and U.S. Attorney Davis, the evidence from the government's own trial exhibits proving GX-1 was withdrawn through the investor deposit receipts, "Confirmation of Receipt of Funds" in which GX-64c was a 10/21/98 receipt for investor Marilyn Brooks for the "High Yield Investment Program through Sanctuary Ministries" (See Exh. I-7), whereas GX-75n was a 1/20/2000 receipt for investor Paul Stinger "for receipt into Investment Program through Sanctuary Ministries", having deleted the reference to "High Yield", is disregarded (Id., R. 34, Exh. L, M; R. 59, p. 36-39).

551. On 10/26/12, Judge Bell copies the Government's Response to deny relief on Ground Three (Id., R. 77, p. 9-12).

552. Evidence tampering is conducted by AUSA Gezon at trial with the 10/99 newsletter, GX-33, which described the new program replacing the prime bank program, GX-1, as stock trading, where the page naming it, the "Bahamas 'CD' Trading Program", is removed and made into GX-3, placing it next to GX-1 to falsely infer GX-3 was

an update to GX-1, to falsely represent in rebuttal closing arguments that investors were "promised" both together during the 39 mail fraud counts, thereby inventing the crime regarding false representations over a product none of the defendants saw before the 2005 trial.

553. Out of an alleged 577 investors, a 3-1/2 year investigation, and 97 trial witnesses, including 19 for the defendants, not one witness, whether an investor or government investigatory agent, testifies to any of the Bahamas program documents being promised together with GX-1, whether it was the Bahamas program page removed from GX-33 and made into GX-3, or GX-2, or being given GX-1 with GX-3 or GX-2.[11]

554. When AUSA Gezon submits GX-33 into evidence during investor John Beemer's testimony, Kaczor makes no objection as asked, and Gezon specifically does not review this exhibit with the jury, instead instructing him, "You can just close that up, Mr. Beemer. I don't want to ask you any questions about that particular one" (1:04-cr-165, R. 471, TR 344-345)(See Exh. J-7).

555. During his testimony, John Beemer clarifies that the 11/00 letter, GX-61F, which he received was about "the program that was in the Bahamas that was discussed earlier that had to do with the stock market" (Id., R. 471, TR 349).

556. Evidence tampering is committed by AUSA Gezon at trial with GX-31, the 6/99 newsletter, which named Suisse Security Bank & Trust, Nassau, Bahamas, as the bank being used for the new program, states wiring instructions to SSBT are attached (¶ 4, p. 2), and a statement from SSBT on its letterhead regarding Y2K compliance is also attached (¶ 5, p. 2), but these attachments are removed before submission into evidence, and just like GX-33, this exhibit is not reviewed with the jury.

557. While Kaczor refuses to object to the entry of GX-31 (Id., R. 471, TR 247), due to Marcusse's complaints to him, in closing arguments Kaczor says about GX-31 and AUSA Gezon, "He attaches the newsletter, but he doesn't attach the statement from Suisse Security Bank that should be attached to this newsletter, nor does he have Agent Flink do any investigation of Suisse Security Bank. They know that's where the money is. The investors are being told about the money. But no one flies down there. No one calls down there. If we're making a determination, an investigation where the money is, let's do a little bit other than just collecting bank records. Let's go and talk with these people. Let's call them on the phone. Let's attach the statement so the investors can see it as well as members of the jury" (Id., R. 521, TR 3598)(See Exh. K-7).

558. Marcusse testifies GX-1 was the third product used after the program with Dr. Nichols to which investor Kim Newell testified, which was discontinued, and the

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11 Both GX-3 and GX-2 are the same "Bahamas 'CD' Trading Program, except GX-2 shows a lower rate of return based upon an updated and recalculated past performance shown as a monthly rate of return rather than annual return.

Bahamas program was the fourth product or program (Id., R. 518, TR 3039-40).
559. Where Kaczor then asks Marcusse, "Now, I understand that you just explained a program with, you know, the different various stock markets..., but that's not this program [the Bahamas 'CD' Trading Program], is it?", she responds, "Yes, it is...the Bahamas CD Trading Program was a stock-based program, and that was clearly put out in a newsletter, I don't recall which government exhibit, but it was like October of '99...It was not a bank debenture program" (Id., R. 518, TR 3043).
560. If AUSA's Gezon and Schipper had submitted the 10/99 newsletter intact at trial, as shown in Agent Moore's 12/5/03 Affidavit, Att. D, Marcusse could have had Kaczor show the jury the Bahamas program was part of GX-33.
561. Marcusse testifies GX-3 and GX-2 are the same product (Id., R. 518, TR 3040).
562. Chief investigator IRS Agent Flink's testimony does not support the theory investors were promised GX-1 relevant to the 39 mail fraud counts or that they were given the Bahamas program (GX-2 or GX-3) with GX-1.
563. Agent Flink admits that the "trading program that was sold to investors" was "Government Exhibit No. 3 or 2", the Bahamas program, not GX-1 (Id., R. 513, TR 2071)(See Exh. L-7).
564. Agent Flink's cross examination also establishes evidence tampering or falsification at trial with GX-33, the 10/99 newsletter, where Marcusse asks him about GX-33, he responds, "That's possible what the newsletter was describing had something to do with a stock trading program", and when asked, "do you recall investors discussing a Bahamas trading program?", he responds, "Yes", but when she asks, "Is it possible that this stock program is the Bahamas trading program?", Flink responds, "I don't know...I didn't get any records out of the Bahamas. I was provided no records about the Bahamas CD trading program other than one piece of paper" [emphasis added](Id., R. 513, TR 2073)(See Exh. L-7).
565. Where Agent Flink admits the product promoted or "sold to investors" was the Bahamas program, GX-3 or 2, not GX-1, he admits his summary exhibits constructed upon the definition of an "investment" being limited to the prime bank debenture product in GX-1 are knowingly false and fabricated, and where developed from those summary exhibits presented at the 7/28/04 detention hearing prior to obtaining the initial indictment dated 7/29/04, knowingly false and fabricated to obtain an indictment from the grand jury (See ¶¶ 155-56, 440-43, supra).
566. The record of the trial shows that, out of the 36 investors who testified, either for the government or the defendants, 32 of them (or their spouse) testified to having been promised a product which was described as having a feature peculiar only to the Bahamas program, or would have received notice of the program through the 10/99 newsletter, GX-33,[12] whereas there was no witness who testified to having

been promised or received GX-1 past 6/99 to cause GX-1 to become relevant to the 39 mail fraud counts in the indictment.

567. Some investors knew of and had been promised the Worldwide E Capital investment as demonstrated by the relevant bank statements from Wells Fargo Bank that AUSA Schipper and IRS Agents Flink and Goeman had Kaczor "delete" in which wire transfers from investors appear (See ¶¶ 463, 476, supra)(See Exh. H-6, B-7).

568. All of the investors knew of and had been promised the MLC "Showcase Branson Project" stock, the location selected for the alternative health clinic, as advised in a 1/01 newsletter, GX-41, which was during the timeframe of the 39 mail fraud counts, and as the focal point of a day and a half seminar in May, 2001 (GX-58, GX-58A), which most investors attended.[13]

569. All of the investors were advised of the charitable nature and goals of Sanctuary Ministries before being allowed to join the group or utilize an investment program. *Several investors testified to having been aware of or even having invested* because they wanted to help support the alternative health clinic planned at the MLC Branson Project or pay for the Cantron provided free of charge to any cancer victims requesting it, having dubbed Sanctuary Ministries, a "Health Ministry" (See Exh. M-7).

570. Government witness, Bonnie Kurnat, who worked for the Bosses, testifies she sent "out quite a few of them [referring to Cantron]" for free (See Exh. M-7, p. 2).

571. The attachment to the 10/99 newsletter, GX-33, that described Cantron, as an alternative health treatment for cancer, is removed by AUSA Gezon before submission at trial (See Exh. N-7)(See ¶ 552, supra).

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12 Eight investors mention the Bahamas program by name: Beemer (TR 349); Sharpe (TR 462); Gross (TR 2511); Gerbyshak (TR 2534); V. Boss (TR 2552); D. Calkins (TR 2569); P. Calkins (TR 2580); Newell (TR 2599). Sixteen invested prior to 10/99 to receive GX-33 as notice: Bannister, Beemer, V. Boss, Brooks, Corenlisse, Derksen, Gerbyshak, Gross, D. Krogman, S. Krogman, C. Murphy, J. Murphy, L. Murphy, Newell, Nowak, Vandenbergen (GX-80). Twenty-six testified to a peculiar feature: P. Stinger (TR 107-108)(J. Stinger, spouse); J. Murphy TR 225, 232)(L. Murphy, spouse); C. Murphy (TR 300); Beemer (TR 341, 349); Walcott (TR 380); Weaver (TR 414-15); W. Sharpe (TR 462, 490)(B. Sharpe, spouse); Nowak (TR 547); Cornelisse (TR 566); Bannister (TR 598); Vandenbergen (TR 710, 742); Bolks (TR 1181); R. Noorman (TR 1198) (D. Noorman, spouse); Rodriguez (TR 1358); Jager (TR 1451); D. Krogman (TR 1560); S. Krogman (TR 1864); Gross (TR 2511, 2517); Gerbyshak (TR 2534-35); V. Boss (TR 2552); D. Calkins (TR 2569); P. Calkins (TR 2580); Newell (TR 2598-99); Linnell (TR 2716); Cole (TR 2741); McDaniel (TR 2747, 2751).

13 Half of the investors testified to the MLC investment: P. Stinger (TR 146, 196) (J. Stinger, spouse); L. Murphy (TR 287, 291-92)(J. Murphy, spouse); Walcott (TR 392); Weaver (TR 423, 429); Bannister (TR 653, 662-65); W. Sharpe (TR 492-94, 498); B. Sharpe (TR 502-08); Borremans (TR 532-37); Nowak (TR 557); Bolks (TR 1183-84, 1188-89); Massman (TR 1587, 1591-93); V. Boss (TR 2553-55); D. Calkins (TR 2569-70, 2574); P. Calkins (TR 2580); Newell (TR 2598).

572. Whereas the May, 2001 seminar tape is introduced during investor Tim Bannister's testimony (Id., R. 472, TR 611), and Judge Bell had previously agreed that Marcusse could play any or all of the tape in her defense to show the charitable aspects of the "Health Ministry", when the time comes to do so, Judge Bell reneges, complaining, "There's nothing being sold here. It's a doctor giving a lecture about heart trouble...I think it's a power struggle. I think that's what we're up against here, and I don't like it and I'm not used to that. I think my role is a little bigger than that...this is not really relevant to the case...if it were a ministry opportunity that Access Financial was offering and it was in conjunction with their report on investments, I think that would potentially be relevant, but this isn't" (Id., R. 515, TR 2804-07)(See Exh. O-7).

573. AUSA's Gezon and Schipper use the term "checkbook church" at least 19 times at trial in front of the jury (See Exh. P-7).

574. Marcusse testifies, "I'm offended at the term checkbook church because it makes a mockery of something that's intensely, deeply personal to me, and that was my health ministry and the concept of trying to save people from dying...my intention with this was to use what were tax dollars based on what I was told I could do by supposed professionals and use those tax dollars that would be saved to finance Cantron, which was our cancer cure, and ultimately an alternative health clinic...I had already discussed prescriptions with an Indian tribe in Ohio, discounted prescriptions, and they had talked about getting a company to do that" (Id., R. 518, TR 3035-36).

575. In cross examination, AUSA Schipper testifies through his questions of Marcusse, "Isn't it true that most of those [investors] who testified, almost all of them, didn't know anything about the Bahamas CD Program? Isn't that true? Isn't that what their testimony was?", to which Marcusse responds, "No, that's not true at all." Schipper again asks, "Isn't it true that <u>most</u> of them testified that they had seen Exhibit 1, that Trading Program, and that's where they thought their money was going?", to which Marcusse responds, "Where did they first see that, in your hands, or in mine?" For the third time, Schipper asks, "Their testimony was, wasn't it, that they saw it from you and/or one of the other salespeople?", to which Marcusse responds, "That was not their testimony. You asked them if they had seen it before." For the fourth time, Schipper asks, "That's correct. And they said you gave them a copy, and that's what they believed they invested in, wasn't it?", to which Marcusse responds, "I don't believe that was part of the testimony" [emphasis added](Id., R. 519, TR 3196)(See Exh. Q-7).

576. In closing arguments, on 6/13/05, Kaczor asks, "What is this trial about?", telling the jury to stay "focused" on the fact that, "This trial is about whether

or not Mrs. Marcusse operated a Ponzi scheme. That's what this is all about. Even Mr. Gezon admits that in his closing argument. This is about a Ponzi scheme" (Id., R. 521, TR 3584)(See Exh. R-7).

577. Kaczor then compares Marcusse's testimony to $13 million in investments to the government's own evidence and witness admissions to establish $7,613,800 in legitimate investments had been made.[14]

578. On 6/14/05, in rebuttal closing arguments, AUSA Gezon specifically and clearly withdraws the "ponzi scheme" as an "element" from jury deliberation by telling the jury, "I don't think if you look at the indictment you will see the words Ponzi scheme anywhere in that indictment. I suspect that you will not hear the word Ponzi scheme coming from the Judge's instructions, and I know you will not see the words Ponzi scheme in any of the elements that you have to consider in these crimes" [emphasis added](Id., R. 522, TR 3713)(See Exh. S-7).

579. AUSA Gezon tells the jury, "The Judge will instruct you that you must determine whether or not a person has devised a scheme to obtain money and used omissions, misrepresentations, reckless statements, falsehoods, or any or all of those things to obtain money from a person in a material matter...let's talk about what we are here about today...they represented that they were currently, currently making huge amounts of money in this high yield program...let's go back and look at the evidence, the believable evidence...First of all, Exhibit 1. How many times have we seen the investors testify that this booklet is what they were shown? Many of them, not all of them, but many of them, saw this booklet. Early investors, late investors got this booklet or a variation of it" (Id., R. 522, TR 3714-15)(See Exh. S-7).

580. AUSA Gezon represents the GX-1 product was paying 3%, not the 10% monthly interest rate contained in the exhibit (Id., R. 522, TR 3714)(See Exh. S-7), thereby relying on the evidence tampering scheme with GX-33 (See ¶ 552, supra), to falsely represent the investors "got" GX-1 with GX-3 or GX-2, the Bahamas program where no evidence or testimony existed to support the allegation, which was the only means available to this prosecution team to cause GX-1 to be relevant to the 39 mail fraud counts and "notice" from GX-380 to be utilized to show the defendants knew their conduct was illegal.

581. Out of an alleged 577 investors, a 3-1/2 year investigation, and 97 trial witnesses, there was no investor presented to prove anyone received, obtained, was

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14 Kaczor argues there were $1.2 million "legitimate reasons for reasonable doubt" where Robert Plaster admitted he "kept" this money transferred to MLC (Id., R. 521, TR 3591); $1.44 million "reasons for reasonable doubt" where Agent Flink admitted this money was sent "to the Bahamas" (Id., R. 521, TR 3599); $2,373,800 of investment money in foreign wire transfers (Id., R. 521, TR 3600); $2 million "examples of reasonable doubt" in funds transferred to Worldwide (Id., R. 521, TR 3605-06); $600,000 investment placed in Valley Boyz Investment Club "even the government says is legitimate" where Besser was an innocent victim (Id., R. 521, TR 3608).

"shown", or "got" GX-1 at any time relevant to any of the 39 mail fraud transaction dates ranging from 10/21/99 to 3/23/01.

582. *On direct appeal, in Issue I of the pro se supplemental brief,* Marcusse argues there was insufficient evidence to show GX-1 was promised at any time relevant to the 39 mail fraud counts, submitting Exhibit A in support showing all references in the trial testimony to GX-1 (See Exh. T-7), except the pro se brief was "declined" consideration by Judges Bertelsman, Rogers and Sutton in their 2/14/08 Opinion to find GX-1 was the only product promised, e.g., "From about 1998 to 2002, defendants organized, operated, and promoted an investment business called Access Financial ('Access'). Defendants represented...that Access had connections to little-known, high-yield investment opportunities in world markets, which were not available to the general public." "Investors received a prospectus-type brochure which described the markets in which Access invested and stated that these alleged markets were recognized and regulated by the U.S. government, Federal Reserve, and International Chamber of Commerce." **Flynn**, 265 Fed Appx. at 436-37.

583. In the 10/14/11 Government's Response to the §2255 submitted under the signatures of AUSA McManus and U.S. Attorney Davis, in response to Ground Three, raising the irrelevance of GX-1 to the charges, evidence tampering, withdrawal, and violation of the Statute of Limitations, McManus and Davis admit there were only 7 witnesses out of 97 trial witnesses that "testified about having seen the exhibit and its contents", mischaracterizing it as "[m]any" witnesses, two of which were not *investors, going on to admit only "two of these witnesses testified to having re*ceived the exhibit after 1998", making reference to investor Richard Weaver, who received it in June, 1999, and Ronald Noorman, who it is falsely represented "received it in January 2000", citing "TT6 1997-98" in support, here again holding the 5/14/09 Order of the Sixth Circuit in contempt where it is argued "this claim should be deemed procedurally defaulted" (See Exh. T-5, p. 3)(1:09-cv-913, R. 59, p. 37-38)(See Exh. U-7).

584. AUSA McManus and U.S. Attorney Davis conclude, "Marcusse wholly fails to establish that Exhibit 1 was 'irrelevant' or that it was 'tampered with'" (Id., p. 38)(See Exh. U-7).

585. In her Reply, Marcusse objects that Weaver testifies that after receiving GX-1 in 6/99 and telling Buffin he is "not interested", that "two days later" Buffin contacts him about a "foreign program" with "IPOs", and based upon the representation the investment was in "stocks", Weaver invests (1:04-cr-165, R. 472, TR 413-415, 438)(See Exh. V-7), which is the Bahamas program.

586. In her Reply, Marcusse objects that in regards to Noorman, he testifies he "first invested in about January of 2000", not that he "received" GX-1 in 1/00, and

elsewhere in his testimony, Noorman states he learned of the investment "in 1999" at "Paradise Cove Marina", which on Lake Michigan, had to be before Labor Day, causing it to be before the first count in the indictment, later citing the rates of return shown in the Bahamas program, which he called "an offshore investment" (Id., R. 475, TR 1195-98)(See Exh. W-7).

587. Indeed, out of the only two investors, out of 577 that could be found to testify they saw GX-1 past the time of the Valley Boyz seizure, one of them, Richard Weaver, testifies at both the 7/28/04 detention hearing and again at trial on 5/18/05, that he did not want to invest in GX-1, he wanted the other program Buffin described--a stock program--testimony that cannot reasonably support a charge the defendants made false representations because investors were promised GX-1 but the defendants did not invest in it (See ¶¶ 145, 549)(See Exh. V-7).

588. Disregarding these facts, testimony and evidence, Judge Bell copies the Government's Response in his 10/26/12 Opinion to deny relief, but first he deletes Weaver's and Noorman's names (1:09-cv-913, R. 77, p. 11)(See Exh. X-7).

589. The record even shows the Attorney General's office provided false information before and during the 2005 trial to keep the investor victims from attending--the individuals in the best position to say what they had been promised--and therefore, the best individuals to determine whether this prosecution team was pursuing false charges against Marcusse.

590. According to the testimony of defense investor witness, Kim Newell, a member of the largest investor family, she had gotten "letters from the Attorney General's Office saying there were scheduled trials and that they were being delayed", the "1-800 number" provided "no information', including "after the trial started", and she only learned the trial was "going on" by calling the Attorney General's office directly and speaking with a secretary there. After reading information online, including a website about Marcusse, she "became very concerned" that the investor group "didn't know what was going on" so she sent a letter to all of them two weeks into the trial (1:04-cr-165, R. 516, TR 2592-93, 2600-01)(See Exh. R-4)(¶ 315, supra).

591. Newell's letter informs the investors the toll-free number included in the Attorney General's letter was giving "wrong information", telling them, "I was amazed at how few investors are there. Most of the courtroom benches are empty", providing them information on how to attend the trial, Marcusse's address in jail, and an "informative website titled www.ipiw.com" (See Exh. S-4).

592. In Ground Twenty-five in her §2255, Marcusse raises the denial of a public trial based on the closing of voir dire to allow U.S. Marshals to frog march her in front of the entire jury pool without witnesses (See ¶¶ 379-381, supra), and based on Newell's testimony the investors were being misled to keep them away

to prevent them from becoming witnesses for the defense, including Newell's letter as Exh. I-1 (1:09-cv-913, R. 34).

593. Judge Bell delays filing the order to show cause in the §2255 for a year until AUSA Schipper can retire, which allows for AUSA McManus to file the Government's Response on 10/14/11, who was not present at the trial. AUSA McManus disregards the evidence about Newell's testimony and her letter as Exh. I-1, to falsely represent, "Nothing in the record shows that any member of the public was in fact excluded", and fabricate a reason to close voir dire by arguing, "even if overcrowding kept out certain members of the public, Marcusse's right to a public trial was not violated" (Id., R. 59, p. 105).

594. The 10/14/11 Response filed by AUSA McManus was also submitted under the signature of U.S. Attorney Davis, who was present at the 2005 trial, and as such, responsible to correct her false representations.

595. In his 10/26/12 Opinion, Judge Bell, who was present to see what the U.S. Marshals did to prejudice Marcusse during voir dire (See ¶ 379, supra); who was present during investor Kim Newell's testimony (See ¶ 590, supra); who was aware enough of the spectators present to have the U.S. Marshals remove a member of the independent press, and later, co-defendant David Albrecht, who pled guilty during trial; who, prior to trial, ordered an anonmyous jury based merely on a letter objecting to Buffin having his bond revoked unlawfully (See ¶¶ 294-95, supra), advising Judge Scoville a member of the independent media would be "observing" the trial and reporting on it (1:04-cr-165, R. 322-2); nonetheless, copies AUSA McManus's argument asserting "overcrowding" to deny relief (1:09-cv-913, R. 70, p. 66-67).

596. Whereas an unnamed individual, under the signature of Clerk Deborah Hunt, denies Marcusse's application for a certificate of appealability on 6/5/14 in Case No. 12-2677/13-1500 at the Sixth Circuit Court of Appeals, making no mention of this structural defect, as set forth by the Supreme Court; in response to a petition for rehearing objecting this structural defect was disregarded, Judges Gibbons, Sutton, and Kethledge deny the motion on 1/12/15 holding, "Upon careful consideration, the panel concludes that the original deciding judge [who remains unnamed] did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter." On 2/2/15, an Order under the same three judges signature states no member of the Court requested a vote on the suggestion for a en banc rehearing.

597. Case No. 12-2677 in the Sixth Circuit was assigned to the application for a certificate of appealability over the denial of the §2255 motion to vacate.

598. Case No. 13-1500 in the Sixth Circuit, which was consolidated with No. 12-2677, was in regards to the Rule 60(b) motions filed under subsection (3) for the misrep-

resentations of the underlying record and fraud upon the court by AUSA McManus and U.S. Attorney Davis, and (4) defects in the integrity of the proceedings where Judge Bell, over Marcusse's filed objections, copied, much of the time verbatim, their misrepresentations and fabrications to deny relief, including procedurally defaulting 19 claims by holding the 5/14/09 Order of the Sixth Circuit on direct appeal in contempt in which a §2255 motion to vacate was to be the "adequate, alternative remedy" to the pro se issues raised and filed in the appeal, after permission was granted, were discriminately not considered by the judicial panel in a circuit where it was the normal practice to consider the pro se brief of an appellant who also had representation and there was a statutory right to proceed pro se as well.

599. While the FBI Form 302's were requested in a FOIA dated 5/12/09 to learn what the investors reported they had been promised for investments in anticipation of the 10/6/09 deadline for the §2255 motion to vacate, David Hardy, FBI, denies them as exempt as law enforcement records--an exemption that otherwise does not apply once convictions are obtained--causing Marcusse to appeal on 6/30/09 to the Office of Information Policy ("OIP"), who "remand[s] the request for further processing of responsive records" (1:12-cv-1025, D.D.C., R. 25-1, ¶¶ 16-24, p. 5-7). The first 97 pages are released on 2/2/10, causing them to arrive exactly too late for use as evidence in support of the §2255 Memorandum ordered due by Judge Bell no later than 2/7/10 (1:09-cv-913, R. 9).

600. None of the previously unavailable FBI Form 302's show an investor telling investigators they were promised the prime bank debenture, GX-1, with the Bahamas stock trading program.

601. Only two investors, whose names are redacted, mention debenture trading, whereas the rest report the Bahamas program and MLC were promised.

602. Agent Corcoran's 2/8/13 Declaration admits 99,838 pages of documents have never been provided, including IRS Memorandum of Interview ("MOI's"), because they did not support the government's theory of the case at the time of prosecution.[15]

602. In August, 2004, AUSA Gezon represents to Marcusse that his office had an "open file" policy.

603. In regards to the defense witnesses Marcusse requests, Kaczor insists on filling her list, delaying the process by two weeks until Agent Flink is able to have his summary exhibits purporting to prove a "ponzi scheme" admitted into evidence

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15 Box 7, ¶ 23(c), p. 18-19; Box 10, ¶ 26(d), p. 22, 24; Box 14, ¶ 30(f), p. 30, 32; Box 17, ¶ 33(d), p. 36-37; Box 22, ¶ 38(c), p. 40-41; Box 25, ¶ 41(b), p. 43-44; Box 28, ¶ 44(f), p. 47, 50; Box 31, ¶ 47(e), p. 54, 56; Box 33, ¶ 49(e), p. 58, 60; Box 40, ¶ 56(d), p. 70-71; Box 41, ¶ 57(c), p. 72; Box 42, ¶ 58(f), p. 73, 75; Box 43, ¶ 59(c), p. 75-76; Box 45, ¶ 61(c), p. 77-78 (1:12-cv-1025, D.D.C., R. 25-9, p. 1-92)(See Exh. V-3).

at trial (See ¶¶ 429, 430, supra), and Marcusse to file a "claim for failure to appear by stand-by counsel" (1:04-cr-165, R. 358).

604. After reducing the number of defense witnesses as requested, on 5/24/05, Marcusse files the "Response to Court's Memorandum Opinion and Order Concerning Ex Parte Request for Payment of Witness Fees" in which she requests 28 defense witnesses (Id., R. 392-1)(See Exh. Y-7).

605. The request for defense witnesses contains 6 investors, including 2 from the largest investor family, Kim Newell and Beth DeMeester;[16] Dr. Reede Hubert and Ed Terlesky, both of whom also purchased MLC stock and knew Carney and Plaster; and Dan and Phyllis Calkins, who invested because of the alternative health ministry (Id., R. 392-1). Beth DeMeester is scared off by IRS intimidation tactics, which Kaczor conceals by averring he couldn't find three or four witnesses (See ¶¶ 325-326, supra). Judge Bell denies Hubert and Terlesky, as investor "victims", the right to testify because they had personal knowledge about MLC, which "may cause confusion of the issues and would be unncessarily cumulative" (Hubert), and "is irrelevant to this case" (Terlesky)(Id., R. 401, p. 3-4)(See Exh. Q-4, p. 3-4).

606. The request for defense witnesses contains 12 witnesses, who were direct witnesses for investments made, including 5 for MLC, such as Robert Plaster, MLC attorney Dan Evans, Richard Williams, Tribal Chairman of the LVD and joint venture partner in the MLC Showcase Branson Project, Christi Heuck, MLC Corporate Secretary who witnessed Carney's signature on the "Disbursal of Funds" contract (See ¶ 54, supra) (Exh. G-1), and Randy Scott, MLC V.P. (Id., R. 392-1). Judge Bell denies Williams and Scott as "a collateral matter" and "not relevant"; he denies Heuck because the "Court has granted subpoenas for other witnesses who are expected to testify as to the legitimacy of certain alleged investments", it would be "in the interest of avoiding cumulative evidence and unnecessarily expending public funds"; he states Plaster will be available as the "government has notified the Court that it will be calling Mr. Plaster to testify"; and he grants Dan Evans (Id., R. 401)(See Exh. Q-4). Evans is one of the three or four witnesses Kaczor cannot locate to serve a subpoena (See Exh. U-4).

607. When Chris Milson calls Richard Williams and explains the circumstances, Williams catches a plane the next morning to appear for Marcusse on 6/7/05, having had extensive experience with Judge Bell's court. See **Lac Vieux I**, 172 F 3d 397, (CA6

16 "In fact her family lost over $800,000 which is a greater loss than any other single family unit. It would seem reasonable that she be allowed to testify to her version of events relating to this matter. The above individual may be helpful in dispelling the 'assumptions' of this Defendant's character. She can also testify as to what kind of investment she expected to get into and what her understanding was as to the risk involved" (R. 392-1, p. 5).

1999); **Lac Vieux II**, 276 F 3d 876 (CA6 2002); **Lac Vieux III**, 129 Fed Appx 938 (CA6 2005), which was decided shortly before Marcusse's trial on 4/25/05.

608. Other direct witnesses to investments made include requests for Winfield Moon, owner, Worldwide E Capital; Richard Gerry, Registered Agent to Worldwide and investment advisor; Robert Everett, with whom the second investment was made in 1998 that paid returns for a year; Christopher Lunn, CEO of SSBT; Raymond Winder, Provisional Liquidator of SSBT; Matt Rydberg, the son of Robert Rydberg, who was the President of Crawfrord Ltd., but who had passed away in January, 2005, after the right to a speedy trial was violated; and Brian Maisel, an associate of Robert Rydberg (Id., R. 392-1). Judge Bell grants Winfield Moon, Richard Gerry, Robert Everett, and Brian Maisel (Id., R. 401, p. 2)(See Exh. Q-4).

609. Judge Bell denies Christopher Lunn and Raymond Winder as "wholly unrelated and irrelevant to this case"; he denies Rydberg as "unnecessarily cumulative" and not "necessary expend public money because Mr. Rydberg is not necessary to Defendant's defense" (Id., R. 401, p. 4)(See Exh. Q-4).

610. At trial, Kaczor advises Judge Bell that Winfield Moon is too sick and infirm to make the trip to testify, which Marcusse agrees to forego as a witness if Richard Gerry would appear, except the next morning, Kaczor releases Gerry as "detrimental" to her defense without her consent (Id., R. 513, TR 2220-21; R. 515, TR 2231). Kaczor further releases Bob Everett (Id., R. 513, TR 2220).

611. In this manner, Marcusse is deprived of the witnesses and bank records to show she made the $1,861,330 investment in Worldwide, including the $600,000 that was arbitrarily carved out of the $700,000 in wire transfers and made unreported "income" to her, which AUSA Schipper used to invent spending in Las Vegas (See ¶¶ 463, 477, 483, supra).

612. The request for witnesses includes two attorneys, Darwin Kal, who had been interested in the MLC project and then litigation against Plaster, and David Pointer, who was a local attorney in the Branson, Missouri area that was familiar with Plaster's reputation and intended to pursue a lawsuit against him for the benefit of the investors no matter the outcome of the trial (Id., R. 392-1).

613. Judge Bell denies Darwin Kal in the "interest of avoiding confusion of the issues and the limited relevance of Defendant's reason for calling Mr. Kal", and he denies Pointer as "not relevant" (Id., R. 401, p. 3-4)(See Exh. Q-4).

614. The request for witnesses include 3 former associates who were not charged, Dan Hammond, Tom Wilkinson and Virgil Boss, who were granted (Id., R. 401, p. 2) (See Exh. Q-4), except Wilkinson was obstructed from appearing under AUSA Gezon's falsified threat of prosecution (See ¶¶ 328-330, supra), and Virgil Boss, while he appears, is arrested to try to obstruct his appearance (See ¶ 323, supra).

615. The request for witnesses includes Scott Addison, who worked with the ACLU in Detroit; Cheryl Gardner, witness to AUSA Gezon's fabrications of "fugitive" status to cause prejudice, as another victim of it, and witness to the incited assault and death threats against Marcusse, presumably to cause her to plead guilty, suggesting a lack of merit to the prosecution; and Chris Milson, who had conducted his own private investigation of the case (Id., R. 392-1, p. 10, 15).
616. Judge Bell denies Gardner and Addison as "wholly unrelated and irrelevant to the issues in this case" (Id., R. 401, p. 5-6)(See Exh. Q-4).
617. The request for witnesses includes two federal government officials upon which Marcusse relied for advice and investment decisions--Treasury attorney James Kramer-Wilt and Senior Supervisory Agent Gerard Forrester of the FBI, who endorsed SSBT and Mohammed Harajchi twice in writing before the bank's license was revoked and $31 million went missing (Id., R. 392-1, p. 7-8; R. 392-2, 11-12)(See Exh. Y-7).
618. On 5/26/05, as authored by AUSA Donald Davis, but submitted under the signature of AUSA Gezon and U.S. Attorney Chiara, AUSA Davis objects to Gerard Forrester, "The existence of this person is of doubtful validity. The alleged FBI memo in the attached exhibits is unauthenticated and may have been used to fraudulently promote the investment scheme." "The attached exhibits are a collection of unauthenticated letters and excerpts of documents which would not be admissible without proper foundation. The alleged letters of the FBI, banks, and Bahamian officials appear to be bogus on their face and are typical <u>prime bank fraud</u> lulling documents and are clearly inadmissible hearsay" (Id., R. 397, p. 2-3)(See Exh. Z-7).
619. AUSA Davis further objects in general, "The government does not concede that <u>any</u> of the witnesses will support her claims of how she spent investor funds" [emphasis added]. "The testimony of many of her witnesses, if called for the improper purpose suggested by the Defendant in her opening statement, and on cross-exam, would not be permitted to bolster her self-serving argument that she relied in good faith on representations made to her" (Id., R. 397, p. 3)(See Exh. Z-7).
620. Attached to Marcusse's request for witnesses were the two letters of Agent Forrester endorsing SSBT prior to its license revocation (Id., R. 392-2, p. 15, 17-18)(See also Exh. F).
621. Judge Bell denies Gerard Forrester because "the external causes of the failure of certain alleged investments is a collateral matter to this case. It is not relevant to the charges against Defendant. Moreover, the government has suggested that the existence of this person is of doubtful validity" (Id., R. 401, p. 3)(Exh. Q-4).
622. While Judge Bell grants James Kramer-Wilt (Id., R. 401, p. 2)(See Exh. Q-4), Kaczor is unable to locate him to serve a subpoena (Id., R. 516, TR 2644)(See Exh. U-4), thereby denying Marcusse any kind of a good-faith reliance defense.

623. In her request for witnesses, Marcusse had indicated in regards to Forrester that he "was a government official used as a reliance to 'safe' offshore banks" (Id., R. 392-1, p. 8)(See Exh. Y-7).

624. In Agent Moore's 12/5/03 Affidavit to his Criminal Complaint, he alleges Marcusse represented "investors' principal was kept in a safe CD-type instrument" (Id., R. 2, p. 2).

625. The 7/29/04 indictment alleges the defendants made false representations, "knowing that: (1) the investors' funds had not been placed in a certificate of deposit, or any other safe account in a financial institution" (Id., R. 24, p. 5).

626. The prime bank booklet, GX-1, does not promise trades in certificates of deposit, but trades in debentures offered through prime banks.

627. Testifying through questions and redirect of Agent Flink, AUSA Gezon asks if investments were made in a "safe CD-like" organization or environment (Id., R. 478, TR 1944; R. 514, TR 3120; R. 520, TR 3369), to which Flink responds "no".

628. In closing arguments, at least 5 times AUSA Gezon avers no investments were made in a "safe CD-like" environment (Id., R. 521, TR 3503, 3512, 3530, 3537, 3539), an argument intended to mislead and confuse the jury by merging and blurring the characteristics of GX-1 and GX-33, the Bahamas program.

629. During Marcusse's testimony, AUSA Schipper objects to the submission of the 8/4/02 Third Report of the Provisional Liquidator of SSBT, which shows $31,481,295 in missing assets as Def. Exh. M-R (See ¶ 100)(Exh. W-1), causing Judge Bell to deny its admission (Id., R. 518, TR 3085).

630. Marcusse includes the 8/4/02 Report in her "evidence packs" (Id., R. 422-4, p. 9-41)(See Exh. W-1, p. 40), which is denied admission by Judge Bell (See ¶¶ 504-509, supra).

631. Marcusse also testifies to the individuals in control at SSBT, including Mohammed Harajchi, who owned the bank, and Michel Harajchi, who handled the funds from the wire transfers where "[t]hey had set up some securities accounts at UBS, United Bank of Switzerland, which had locations in the Bahamas and of course in Switzerland itself" (Id., R. 518, TR 3076-77)(See Exh. B-8).

632. After trial, Marcusse requests on four separate occasions for Kaczor to return the documents she gave to him to submit as evidence during her testimony or defense witness testimony, only returning a few MLC documents and nothing else, as she objects to the attention of Clerk Ronald Weston and Judge Bell (Id., R. 479-1, p. 5) (See Exh. E-8).

633. On 10/26/05, Marcusse submits a Rule 60(b) motion entitled, "Suisse Security Bank & Trust -- A Dept. of Justice Sponsored Scam", in which she complains of the "unclean hands" involved in bringing a prosecution in which Agent Forrester repre-

sented in writing on 2/11/00 and again on 1/10/01 that SSBT had "subscrib[ed] to all money laundering regulations", with SSBT having its "license revoked less than two months later on 3-5-01 freezing all deposits amidst allegations of 'money laundering'" as per a 7/20/01 article in the Nassau Guardian (Id., R. 563-1, p. 1; R. 563-7, p. 1)(See Exh. C-8).

634. Additionally, Marcusse includes Exh. 7 to the 10/26/05 pleading in which Bahamian Minister Bradley Roberts files an 8/23/04 "Press Release" where he complains about Mohammed Harajchi and Agent Forrester, reporting, "Yes he is a retired Special Agent of the FBI. But he likewise is a personal friend and has been a personal aide of Mohammed Harajchi's for many years. Years that I assume also included when he was an FBI Special Agent. In fact during the last hearing for the case of SSBT in the Bahamian courts, I am advised that Gerard Forrester was in the company of Mr. Harajchi during the court hearing" (Id., R. 563-10, p. 4)(See Exh. C-8).

635. Harajchi's appeal of the revocation of SSBT's license was argued in January, 2003, with the court of appeals reaffirming the 2003 judgment on 6/29/04 (Exh. D-8).

636. In the 10/26/05 pleading, Marcusse complains that Leonard Zawistowski of the Federal Reserve "admitted at trial that it was the Federal Reserve that 'collapsed' several banks in *the Bahamas in 2001*, however the *trial transcript* has been tampered with by Court Reporter Kevin Gaugier, CSR 3065" to remove it (Id., R. 563, p. 4) (See Exh. C-8).

637. In the 10/26/05 pleading, Marcusse includes Exh. 19, which is a House Report dated 2/10/00 discovered after the trial entitled, "Money Laundering Crisis Hearing", describing the use of undercover stock brokerage firms and banks offshore, Operation Juno and Operation Dinero, in which an "undercover agent promoted the bank's services" (Id., R. 563, p. 9; R. 563-22, p. 1-6)(See Exh. C-8).

638. February 10, 2000 was the day before Agent Forrester's first lulling letter of 2/11/00 about SSBT which was "designed to scam his victims" (Id., R. 563, p. 9) (See Exh. C-8).

639. On 10/27/05, a Rule 60(b) claim is filed regarding the "falsified narcotics charges" that had repeatedly surfaced in the case, the fabricated unreported income claims based on Agent Flink's perjury to invent motive, and the use of federal government employees, such as Treasury attorney James Kramer-Wilt, to mislead the public (Id., R. 551).

640. On 10/27/05, a Rule 60(b) claim is filed regarding the subornation of perjury of Marcusse's ex-husband, Bruce, who testifies he did not sign a notarized statement witnessed by Sheryl L. Devry, at trial so that the $45,000 of embezzled checks his sister, Diane Boss, wrote to Bruce could instead be attributed to Janet Marcusse's unreported "income", enclosing a copy of a FOIA request to Terri Lynn Land,

Secretary of State, Michigan, and including a copy of the signed and notarized statement (Id., R. 553)(See Exh. F-8).

641. Marcusse had been obstructed from making written objections to the PSR by moving her back to Newaygo County Jail and confiscating all of her legal papers (Id., R. 509)(See ¶ 491, supra)(See Exh. G-8).

642. On 10/28/05, at the sentencing hearing, Kaczor admits Marcusse had "made it very clear that she does not wish me to speak on her behalf and that she does wish to speak on her own behalf at sentencing and raise any objections that she has" (Id., R. 639, TR 5-6).

643. Before Marcusse is given the opportunity to speak, Kaczor offers a glass of water to Marcusse, telling her he knows she always gets thirsty when she has to speak. When Marcusse drinks the water, her mouth goes completely dry and she has no saliva, choking her, in an effort to obstruct her ability to speak. The prescription Atropine causes such a reaction as well as heart palpitrations.

644. Neither Kaczor nor the individuals involved in drugging Marcusse at sentencing had the lawful ability to dispense prescription drugs.

645. As an allocution is a right to which Marcusse was entitled, nothing was going to stop her from speaking at the hearing. Unlike the trial, where there were few spectators, the sentencing hearing was packed with spectators.

646. Marcusse discusses the information she has discovered, as included in the 10/26/05 Rule 60(b) pleading (See ¶¶ 633-38, supra), placing on the record the evidence that caused her to believe SSBT was a Dept. of Justice "scam" in which $31 million went missing after Agent Forrester endorsed SSBT twice in writing, with "lulling letter[s] designed to scam his victims, which included myself and the investors to which I have steadfastly remained responsible from the beginning of this scam" (Id., R. 639, TR 7-8)(See Exh. H-8).

647. Marcusse suggests that the 14,520 months or life in prison calculated for her sentence is such a "gross abuse of authority and conflict of interest" that it indicates a "potential condition of mental illness" (Id., R. 639, TR 23)(See Exh. H-8).

648. Marcusse objects that in her case, "the intent to defraud" was "not debatable", as it was made a "fraudulent presumption" and caused there to be "no federal jurisdiction in this matter as there was no controversy to adjudicate" (Id., R. 639, TR 18)(See Exh. H-8).

649. Whereas in each of the other 7 co-defendant's sentencing hearings, Judge Bell finds the crime to be a "ponzi scheme", in Marcusse's case, he calls it "specialized high return investments" (Id., R. 639, TR 45), demonstrating his cognizance GX-1 was not relevant to the charges or he could have called the crime "prime bank" or "high yield" investment fraud.

650. In the middle of Judge Bell's commentary, for no apparent reason, the U.S. Marshals standing on either side of Marcusse-Steve Hetherington and a woman--begin to bend her fingers and thumbs back so aggressively that she yells due to the excruciating pain, "Ouch, quit. Quit", to which the Marshal orders, "Stand here", which she simply couldn't do because of the horrific pain and fear of being maimed. Four times Marcusse begs Judge Bell to make them stop hurting her, but each time he threatens, "Stand and be quiet until I finish", which she could not do, causing Judge Bell to order her removal, which served to silence her objections (Id., R. 639, TR 46-47)(See Exh. H-8).

651. If Marcusse's fingers had been broken, she would not have been able to prepare pleadings to fight her convictions on appeal, as no doubt also intended. As it is, she suffers pain in her fingers to the current day, frequently dropping items because she cannot feel them.

652. As Marcusse complains in a pleading filed right after sentencing, the female Marshal who attacked her at sentencing, called her a "whore" before the hearing, jerking her out of the holding cell by her ponytail, pulling her hair, scratching her, bruising her, all in an apparent attempt to rile her up prior to the hearing and interfere with her ability to give an allocution, which constitutes "torture" that she did "not have to silently endure", as it is "criminal" activity (Id., R. 575-1, p. 2)(See Exh. I-8).

653. On 10/28/05, Marcusse was sentenced to 60 months on the mail fraud counts to run consecutive to 240 months on the money laundering counts for a total of 300 months as a Cat. I criminal history (Id., R. 558, p. 2).

654. This 25-year sentence was 5 years in excess of the statutory maximum of 20 years that Magistrate Carmody had advised her could be applicable at the 2/23/05 competency hearing where she allowed Marcusse to proceed pro se at trial (Id., R. 241, p. 2)(See Exh. J-8).

655. Marcusse is further sentenced to $12,651,244.80 of restitution to the investor victims for losses caused by other parties; $310,722 in restitution to the IRS on unreported "income" she never had an economic benefit upon; and $6,000 in special assessments at $100 per count (Id., R. 558, p. 5).

656. On 10/28/05, the Associated Press and NBC News run the report, "Screaming Con Artist gets 25 years in Prison", in which AUSA Schipper falsely reports, "She walked away from the lectern as U.S. District Judge Robert Holmes Bell began issuing her sentence, prompting the judge to order U.S. marshals to bring her back, prosecutor Mike Schipper said. Marcusse yelled repeatedly at the judge while she was restrained, saying 'I don't recognize you', before she was removed from the courtroom, Schipper said" (See Exh. K-8). Kaczor is misquoted as saying, "'It's unfortunate

that she was unable to maintain the decorum of the court and show the respect to Judge Bell that Judge Bell showed her by allowing her to speak for over an hour', said David L. Kaczor, a federal public defender assigned to help Marcusse prepare her defense. She had refused to be represented by a lawyer" (See Exh. K-8)(Compare to the actual sentencing transcript, Exh. H-8, TR 46-47, 49-50).

657. In the article, prosecutors further falsely represent, "Marcusse was living in Grand Rapids when the investigation started but fled with her investment records to the Branson, Mo., area in 2002. She remained a fugitive until 2004, when authorities tracked her to a cabin in a wooded area of rural Missouri" (See Exh. K-8).

658. At trial, Agent Moore had admitted "there was some strategy on our part as an investigative team" not to arrest her on the bench warrant issued on 7/29/02 (Id., R. 477, TR 1654)(See ¶ 95, supra).

659. One major benefit to this "investigative team" using this fraudulent "strategy" was the ability to infer guilt with the public and the jury by misrepresenting Marcusse had been "on the run" and was a "fugitive" (See ¶ 134, supra).

660. Under cross, Marcusse has to ask Agent Moore at least 10 times whether he received a fax from MLC on 6/4/02 containing her address and phone number before he would admit it (Id., R. 477, TR 1679-81), demonstrating AUSA's Gezon and Schipper, and Agents Moore and Smith, were deliberately misrepresenting Marcusse "fled" or had been "on the run" for its tactical advantages.

661. Agent Flink testifies the office was moved to Branson, Missouri in October, 2001 (Id., R. 478, TR 1978), which would have been before any of the defendants were aware of the federal investigation.

662. Agent J.R. Smith, who arrests Marcusse at home on 7/1/04, testifies she was "extremely difficult to locate", falsely representing he arrested her after there was "a warrant issued on an indictment for her" (Id., R. 478, TR 1766-67). The initial indictment was dated 7/29/04 (Id., R. 24), and the contempt warrant expired on 8/29/03 (Id., R. 6).

663. After Agent Smith's testimony, he and the "investigative team" high five each other, pat each other on the buttocks, and Agent Smith tells them, "good luck man", like they are at football practice, engaging in unprofessional behavior in front of the jury.

664. Marcusse was not at all "difficult" to find where all that was done was to threaten 24-year-old Jessica Dudkiewicz with 25 years in prison to obtain her address, *explaining why Dudkiewicz sobbed throughout her testimony (See ¶ 321, supra).*

665. In closing arguments, AUSA Gezon falsely represents Marcusse "blows town in 2002" (Id., R. 521, TR 3721), and "goes underground" (Id., TR 3526). Presumably, AUSA Gezon was not referring to her 4/8/02 trip to Washington, D.C. to meet with

members of Congress with Michael Carney and Randy Scott of MLC (See ¶¶ 66-68, supra).

666. On 11/18/05, Judge Bell files "Administrative Order No. 05-152, making Marcusse a restricted filer for submitting "communications [that] are lacking in any legal merit and are plainly designed to harass and intimidate the recipients" (Id., R. 601)(See Exh. L-8).

667. In addition to the Rule 60(b) motions filed at the time of sentencing, on 11/15/05, Marcusse files a "Complaint of Court Reporter Official Misconduct", regarding Kevin Gaugier, CSR 3065, tampering with the trial transcripts where he removes Federal Reserve "expert" witness Leonard Zawistowski's admittance his employer had "collapsed" Class B banks in the Bahamas in 2001 (Id., R. 590)(See Exh. M-8).

668. At trial, Zawistowski testifies there were 6 "red flags" to high-yield investment frauds, including (1) "what we found in common between all of these schemes" was the "use of the term Prime Bank", where instead of naming a bank, they name this category because "in a real banking transaction you name the parties to the transaction"; (2) an "unrealistic rate of return"; (3) "secret" market; (4) Federal Reserve participation under International Chamber of Commerce regulations; (5) a charitable or humanitarian aspect; and (6) unavailable to the general public (Id., R. 473, TR 781-83, 790).

669. Zawistowski is asked to review GX-1 by AUSA Schipper, testifying that the Federal Reserve warning issued in 1996 was placed on the Internet about "Prime Bank" frauds (Id., R. 473, TR 786-87). Agent Moore's 12/5/03 Affidavit to his Criminal Complaint contained a 6/11/96 "Investment Scheme Advisory" about "prime bank" financial instruments (Id., R. 2, Att. G)(See Exh. N-8).

670. When asked by AUSA Schipper about the Bahamas program, Zawistowski renders his opinion that it was a prime bank fraud (Id., R. 473, TR 791).

671. Zawiwtoski testifies the initial warnings from the Federal Reserve "specifically covered Prime Banks as a subject. It was one of the main topics of this warning. And then we had a <u>subsequent circular that we put out in 2002 that covered some other areas and added these red flags that we spoke of</u>" [emphasis added](Id., R. 473, TR 787)(See Exh. O-8).

672. The last mail fraud count in the indictment was dated 3/23/01.

673. Zawistowski is the 19th government witness, but the first witness Marcusse is permitted to cross examine, as shown by Kaczor asking for a side bar with Judge Bell during his testimony at page 800.

674. Marcusse asks, "Prime Bank debentures are not stocks, are they?", to which Zswistowksi responds, "No, they're debt instruments. So no, they're not stocks if that's your question, common stocks like publicly traded stocks" (Id., R. 473, TR 804)(See Exh. O-8).

675. Marcusse asks, "So in other words, then, the Bahamas program, which was very clearly disclosed as a stock program, is not a Prime Bank Scheme?", to which Zawistowski responds, "To tell you the truth, what I reviewed about the Bahamas program was I didn't see any reference to the instrument itself except for these debenture tradings" (Id., R. 473, TR 804)(See Exh. O-8).
676. For Zawistowski's opinion to be rendered in such a manner required evidence tampering by removing GX-3, the Bahamas program, from the 10/99 newsletter describing the program as in stocks, and GX-1, the only product trading "debentures", to have been reviewed together.
677. There is no investor testimony that states they were promised or given GX-1 with the Bahamas program (GX-2, GX-3 or GX-33).
678. Marcusse asks Zawistowski to read from GX-33, page 2, "We are instead in what is termed a stock trading program", and, "This program is not considered to be a standard bank debenture program" (Id., R. 473, TR 804-05)(See Exh. O-8), which if GX-33 had been submitted at trial intact with the page naming it the Bahamas program, GX-3, Zawistowski could not have testified it was a prime bank fraud, and Marcusse would have been able to use GX-33 to show the jury GX-3 was in fact in the exhibit.
679. By removing the Bahamas program from GX-33, the 10/99 newsletter, it also removed its relation ot the 6/99 newsletter stating the new program was at SSBT.
680. Marcusse then asks Zawistowski, "So that's why I was asking you your professional expertise that typically a Prime Bank fraud scheme is not stock related?", to which he responds, "That's correct" (Id., R. 473, TR 805)(See Exh. O-8).
681. Marcusse asks Zawistowski about the "Financial Action Task Force" and the Bahamas being "blacklisted" in 2000, where "apparently afterwards there were a number of Bahamas banks where their licenses were pulled and the banks failed", to which Zawistowski admits his employer "collapsed" some "Class B banks that were licensed in the Bahamas" that "can only deal with offshore clients" (Id., R. 473, TR 806)(See Exh. O-8).
682. In other words, Zawistowski admits the Federal Reserve collapsed Suisse Security Bank & Trust, but this admittance was removed from the trial transcripts before their publication 3 months later on 8/18/05 (Id., R. 473).
683. If Marcusse had made no investments at SSBT or if the Bahamas program had been a prime bank or high yield fraud, it would not have been necessary for this admittance to be deliberately removed from the published transcripts.
684. Marcusse makes numerous references to Zawistowski's admittance afterwards on the record (Id., R. 513, TR 2107; R. 516, TR 2536; R. 519, TR 3246, 3247, 3251)(See Exh. P-8), and in her pleadings (Id., R. 392-1, p. 3, 8)(See Exh. Y-7)(R. 435-1, p. 5-6), including asking Agent Flink if he recalled "the Federal Reserve expert with

the top security clearance testifying that the Federal Reserve crashed some banks in the Bahamas in 2001", who responds, "I don't recall him saying they crashed some banks in the Bahamas, no, but he could have" [emphasis added](Id., R. 513, TR 2107) (See Exh. P-8).

685. Agent Flink's response demonstrates his cognizance that Zawistowski did in fact make such an admittance, as otherwise Flink would not have added the part of the sentence admitting he could have said it.

686. Neither AUSA Gezon nor AUSA Schipper object that Zawistowski's admittance did not occur any of the 5 times Marcusse later makes reference to it (See Exh. P-8).

687. When Zawistowski made the admittance, there were gasps throughout the court-room, particularly at the defense table.

688. In the §2255 proceedings, Judge Bell finds the transcript tampering claim "incredible and unsupported" by disregarding the record, summarily dismissing it on 3/30/11 (1:09-cv-913, R. 41, p. 38).

689. In U.S. Tax Court, Judge Gustafson finds sufficient cause in support of Marcusse's claim of "unclean hands" to order the "shorthand notes or other original records, as requested" on 11/30/11 in Docket 14234-09 (See Exh. Q-8, p. 3), which does not occur when the IRS concedes the case and requests the 11/30/11 Order be vacated (See Exh. R-8, p. 15-16).

690. Agent Moore, who admits to having had a background as a securities broker for 6 years before becoming an FBI agent (See Exh. A, ¶ 3), admits, "I don't know of anything like that", in response to Marcusse's question, "There is no Prime Bank program out there that has stocks in it, is there?" (1:04-cr-165, R. 477, TR 1674-75)(See Exh. S-8).

691. In the absence of evidence tampering with GX-33 to remove the Bahamas program before submission, it could not have been used as "evidence" of prime bank investment fraud based upon the testimony of "expert" Leonard Zawistowski or Agent Moore.

692. Both Leonard Zawistowski and Agent Moore deny being familiar with or having run across Gerard Forrester, a Senior Supervisory Agent (Id., 473, TR 806-807)(See Exh. O-8)(Id., R. 477, TR 1670-71)(See Exh. S-8).

693. Both times AUSA Schipper objects to any further questioning, arguing she'll have the opportunity to testify, with Judge Bell sustaining (Id., R. 473, TR 810) (See Exh. O-8)(Id., R. 477, TR 1671)(See Exh. S-8).

694. In Moore's cross, when Marcusse explains the relevance are the accusations she didn't use a safe bank when it was endorsed by Forrester and she did a Ponzi, Judge Bell states, "But that's part of your proofs in this case" [emphasis added] (Id., R. 477, TR 1671)(See Exh. S-8).

695. Other than her testimony and one summary exhibit, Def. Exh. M-AA (See ¶ 462),

Marcusse was not allowed to use competent and reliable proof, such as the bank records to rebut the Ponzi allegation (See ¶¶ 460-69, 492-500, supra).

696. In Zawistowski's cross, when Marcusse asks him, "So then, in other words, I can't rely on a government official to make a decision", Judge Bell interrupts, stopping the line of inquiry (Id., R. 473, TR 810-11)(See Exh. O-8).

697. In the pro se brief "declined" consideration on direct appeal, Agent Gerard Forrester's endorsement letters of SSBT and Harajchi, as well as Marcusse's reliance thereupon were repeatedly raised throughout it, including in Issue IV, the denial of defense witnesses, and Issue X, prosecutorial misconduct/unclean hands, good-faith reliance defense prevented by questioning Forrester's "existence", and if Zawistowski's testimony is to be credited, albeit the product of evidence tampering (See ¶ 676, supra), then at a minimum, the defense of entrapment by estoppel applied, except the brief is "declined" consideration (See ¶ 421, supra)(See Exh. T-5).

698. On 11/23/05, before Marcusse even arrives at prison, she makes the first of five requests under FOIA to the Dept. of Justice and FBI for documents regarding Agent Forrester and SSBT, as later admitted by David Hardy, FBI, in a 1/11/13 Declaration (1:12-cv-1025, D.D.C., R. 25-1, ¶ 5, p. 2-3; Exh. A)(See Exh. T-8).

699. In his Declaration, Hardy describes and provides copies of the FBI's various responses, including the representation there were no responsive documents in the Central Records System at FBI HQ; that the FBI Miami Field Office ("MMFO") should be contacted, but when Marcusse did so, MMFO forwarded the request back to FBI HQ, who located no responsive records; that she did not properly appeal the denials; and finally, when in a 5/26/12 FOIA request, she indicates Agent Forrester's employment and letters had been authenticated in U.S. Tax Court litigation (See Exh. F, G), Hardy notifes her the pending FOIA requests were being closed due to a lack of payment for duplication fees.[17] (Id., R. 25-1, p. 1-5)(See Exh. T-8).

700. In his Declaration, Hardy makes no mention of Marcusse's appeal of 6/6/06 sent via certified mail (See Exh. U-8), which resulted in the 12/22/06 response from Daniel J. Metcalfe, Director, Office of Information and Privacy ("OIP"), in which Metcalfe makes a Glomar response,[18] "refusing to confirm or deny the existence of any records responsive to your request" (See Exh. V-8).

701. A Glomar response is recognized as an admission responsive records do exist.

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17 David Hardy admits Marcusse placed a limit of $50.00 on the fees in her 5/12/09 FOIA request for FBI Form 302's, which he honors in the first 6 releases of documents, until a 6/13/11 release of 893 pages where $89.30 in duplication fees were demanded, which she could not pay (Id., R. 25-1, ¶¶ 16-52, p. 5-11). Additionally, the documents being provided were so heavily redacted as to be worthless.

18 A Glomar response takes its name from the Hughes Glomar Explorer, a ship built (we now know) to recover a sunken Soviet submarine, but disquised as a private vessel for mining manganese nodules from the ocean floor.

702. On 2/10/11, in support of Marcusse's Complaint in Tax Court raising the issue of "unclean hands", she files a Request for Admissions to have Agent Forrester's letters of endorsement regarding the compliance of SSBT with U.S. money laundering laws authenticated (14234-09, R. 48)(See Exh. F).

703. On 3/30/11, in the pending §2255, a process that took over 3 years to complete from 10/2/09 to 10/26/12, Judge Bell enters an Order summarily dismissing Ground Fifteen, Arguments (2) "Movant was improperly denied the right to pursue a 'good-faith reliance' defense"; (3) "Movant was improperly denied F.B.I. letters from admission into evidence"; and (4) "federal officials were involved with the administration and collapse of a bank located in the Bahamas" (1:09-cv-913, R. 42).

704. In the 3/30/11 Opinion, Judge Bell finds in regards to Gerard Forrester, "Although it is unclear from the record or Movant's exhibits whether Mr. Forrester even exists, or if the alleged letters can be authenticated, this argument does not rise to the magnitude necessary to be cognizable under a §2255 motion" (Id., R. 41, p. 28)(See Exh. A-8).

705. Judge Bell characterizes Argument (4) "that federal officials were involved with the administration, endorsement, and collapse of a bank located in the Bahamas", to be "implausible assertions [that] are speculative conclusions, unsupported by the record, motion, or exhibits and are without merit" (Id., p. 29)(See Exh. A-8).

706. Judge Bell makes no mention of Suisse Security Bank by its name, or even its abbreviation, "SSBT", which is recognized online as standing for "Suisse Security Bank & Trust" (See Exh. W-8).

707. Judge Bell publishes the 3/30/11 Opinion under **Marcusse v. United States,** 785 F Supp. 2d 654 (WD Mich. 2011).

708. It is not discovered until 4/25/15 that the <u>same day</u> as Judge Bell's Opinion--3/30/11--a scandal breaks in the media in which "retired FBI Agent Gerard 'Jerry' Forrester, the FBI's Miami liason officer in the Carribean in the 1990's", is quoted from secretly recorded conversations as having bragged about routinely "kidnapping" Bahamians accused of a crime in South Florida and unlawfully sending them back without an extradition hearing, including one man who was "later killed in police custody", as part of an investigation in which Forrester was hired to dig up "dirt" on Canadian fashion mogul Peter Nygard (See Exh. X-8).

709. A second or successive §2255 motion cannot be filed on the same issue.

710. On 6/17/11, Judge Gustafson in Tax Court enters an Order deeming as admitted the Request for Admissions when the IRS did not respond, thereby authenticating Agent Forrester's existence, employment and letters (Id., R. 50)(See Exh. G), except this was too late for entry in the pending §2255 case as Judge Bell had already summarily dismissed the issue.

711. Previously, no information could be found regarding Forrester online, such as in government websites (See Exh. Y-8), and Marcusse had been led to believe his nickname was "Gerry" (1:04-cr-165, R. 392-2, p. 16)(See Exh. Z-8).

712. Once it was learned Forrester uses the name "Jerry", it led to the discovery of his website, J-F Investigations, where a copy of his FBI badge is contained, showing he retired two days after his second endorsement letter of SSBT on 1/12/01, listing SSBT as a "Notable Client" (See Exh. A-9), otherwise known as Suisse Security Bank & Trust (See Exh. W-8).

713. Comparing Forrester's signature on his FBI badge with the signatures on his 2/11/00 and 1/10/01 letters endorsing SSBT and Mohammed Harajchi shows they were all made by the same individual (See Exh. B-9, Exh. F).

714. The discovery of Gerard "Jerry" Forrester's website containing his FBI badge shows AUSA's Davis, Gezon, and Schipper, and U.S. Attorney Margaret Chiara lied on the record where they averred Forrester's "existence" was of "doubtful validity" (See ¶ 618, supra)(See Exh. Z-7).

715. The discovery of Gerard "Jerry" Forrester's website containing his FBI badge, his signature, and his representation that SSBT was a "Notable Client" providing authentication of his two endorsement letters of SSBT prior to its license revocation on 3/5/01 (See Exh. A-9), shows that Marcusse was fraudulently deprived of a "good-faith reliance" defense as Forrester could <u>not</u> have attested SSBT and Mohammed Harajchi were complying with all U.S. money laundering laws where they were conducting a prime bank or high yield investment fraud on site using SSH or SSI (See Exh. F).

716. The discovery of Gerard "Jerry" Forrester's website containing his FBI badge showing a retirement date of 1/12/01 in "good standing" demonstrates AUSA's Davis, Gezon and Schipper deliberately concealed Forrester, who would have been receiving a retirement check, from Marcusse to obstruct him as a defense witness.

717. The discovery of Gerard "Jerry" Forrester's website, in combination with his endorsement letters of SSBT (See Exh. F), shows that <u>before</u> the Harajchi's stole $17.7 million right after the license revocation on 3/5/01 (See Exh. W-1), Gerard Forrester was helping them to obtain and retain clients, such as Marcusse and by extension her investors, by utilizing the full authority of the United States Government to lull and deceive her, and <u>after</u> the Harajchi's stole $17.7 million, Jerry Forrester was collecting consultancy fees to supplement his FBI retirement income.

718. At trial, AUSA Schipper objects to the submission of the Provisional Liquidators Report of 8/4/02 as Def. Exh. M-R, which reported the Harajchi's stealing the $17.7 million from SSBT by transferring the Suisse Security Holdings Ltd. ("SSH") and Suisse Security Investments, Inc. ("SSI") accounts to Switzerland (See Exh. W-1), successfully obstructing it from the admitted evidence (Id., R. 518, TR 3084-85)

(See Exh. C-9).

719. As filed in the "evidence packs", which Judge Bell denied admission for the jury to see (See ¶ 509, supra), the transfer instructions directed Marcusse to send funds to the account name of "Suisse Security Holdings Ltd" (Id., R. 422-2, p. 8; R. 422-3, p. 20)(See Exh. D-9).

720. AUSA Gezon had previously removed the wiring instructions to SSBT from GX-31, the 6/99 investor newsletter, before submission into evidence, with Kaczor making no objection (Id., R. 471, TR 247), only making mention of the attachments being missing from GX-31 in his closing arguments (See ¶¶ 556-57, supra)(See Exh. K-7).

721. Comparing the wire transfers to SSBT in support of Def. Exh. M-AA, which AUSA Schipper on behalf of Agents Flink and Goeman, in collaboration with Kaczor, and later with Judge Bell in the "evidence packs", obstructs from being submitted into evidence (¶¶ 462, 506, 509, supra), show the funds going to SSBT and from there to Swiss Mercantile's Suisse Security Holdings account (See Exh. W-6; Exh. D-9).

722. Investor Ray DeMeester, who was intimidated by IRS Agent Erica Boerman, from appearing as a defense witness (See ¶ 326, supra), could have submitted his wire transfer showing $14,000 in investments going to SSBT and from there to SSH (Exh. E-9).

723. One of the Bates stamped wire transfers provided by IRS Agent Corcoran on 1/9/13 after Marcusse sues the IRS, includes a $100,000 profit distribution transacted by Michel Harajchi on 8/12/99 (See Exh. F-9)(See also ¶ 631, supra).

723. On 7/12/11, the Third Report of the Official Liquidator of SSBT is submitted in which it is stated that "US $17,717,067 remains under the control of the Bank's Management", held in the names of SSI and SSH (See Exh. G-9).

724. Raymond Winder, SSBT's Liquidator, also indicates in the 7/12/11 Report that he is tasked with "reconciling" and "substantiating" claims (See Exh. G-9).

725. On or about 1/18/12, only months after the Forrester scandal breaks and the Third Report of the Liquidator is issued, but 6-1/2 years after the 2005 trial, an illegal entry occurs at Christopher Milson's home in Elkland, Missouri, where Marcusse's business records were being stored, in which only her records were targeted and destroyed.

726. On or about 1/9/12, the IRS sends Milson a notice he is being audited.

727. It is not until a personal visit by Milson with Marcusse on 1/11/13 at FCI Tallahassee that he discloses his house had been "burglarized and completely ransacked", providing her with an Affidavit accordingly, which states it was his "firm belief that this act was not targeted towards normal valuables, rather it appeared specific to destroying documents" (See Exh. H-9).

728. On 1/29/13, Marcusse submits a "Motion to Compel Production of Valid Search Warrant & Affidavit" via certified mail, including the photos provided and authenticated by Milson as Exhibit A, and the evidence of a prior history of an illegal

search in the case, as per the "drug-trafficking" search warrant executed on her attorney Gurmail Sidhu to seize and withhold bank and business records, this being in a case AUSA Gezon averred was not about drugs (See Exh. I-9)(See also ¶ 135, supra) (See Exh. E-2 for the Sidhu article included as Exh. D to the 1/29/13 motion).

729. The docket for the criminal case shows neither Clerk Tracey Cordes nor Judge Bell have acknowledge receipt or filed the motion, although served via certified mail, nor has an order been entered rejecting the pleading from filing (Exh. J-9).

730. Destroying all of Marcusse's business records handicaps her ability to submit all of the necessary documentation for a claim in SSBT's liquidation.

731. It was not until Marcusse sued under FOIA that she was able to obtain some of the bank records from IRS Agent Corcoran, except according to his 2/8/13 Declaration, such documents are still being withheld (See ¶ 520, supra). Additionally, Agent Corcoran admits to having withheld documents regarding "investment entities" in a case where he as an "investigator", along with IRS Agents Flink, Boerman, and Goeman, all denied investments had been made in order to secure convictions, only now admitting the records were withheld because they did not support the government's theory of the case (1:12-cv-1025, D.D.C., R. 25-9)(See Exh. V-3).[19]

732. After the Forrester scandal breaks on 3/30/11, the "facts" and evidence used to secure convictions change, again, in Marcusse's case, this time to deny the Bahamas program at SSBT had been promised to investors.

733. In Agent Moore's 12/5/03 Affidavit to the Criminal Complaint, the characteristics of the Bahamas program are merged with the prime bank program in GX-1, as is also done in the indictment, the Government's Trial Brief, and AUSA Gezon's rebuttal closing arguments (See ¶¶ 125-26, 302, 447-49, 546, 552, 579-81, supra).

734. Richard Griffis, Sentencing Guidelines Specialist, in the Presentence Report ("PSR"), includes the "Bahamas CD Trading Program offered by Access Financial Group" (¶ 46) under the "Offense Conduct".

735. On direct appeal, in his 4/25/07 Appellee Brief, AUSA Schipper continues to merge the characteristics of the Bahamas program with GX-1, even making reference to both exhibits as "Ex. 1-4" in support of the "high-yield investment program"

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19 ¶ 17(b), Box 1, p. 9; ¶ 18(b), Box 2, p. 10; ¶ 19(d), Box 3, p. 12; ¶ 20(c), Box 4, p. 13; ¶ 21(c), Box 5, p. 15; ¶ 22(e), Box 6, p. 17; ¶ 27(c), Box 11, p. 26; ¶ 28(a), (c), Box 12, p. 26-27; ¶ 30(d), Box 14, p. 30; ¶ 31(d), Box 15, p. 32; ¶ 33(c), Box 17, p. 37; ¶ 34(a), Box 18, p. 38; ¶ 36(a), Box 20, p. 39; ¶ 39(a), Box 23, p. 42; ¶ 42(a), Box 26, p. 45; ¶ 43(a), Box 27, p. 46; ¶ 44(c), Box 28, p. 48; ¶ 45(a), Box 29, p. 51; ¶ 46(ab), Box 30, p. 53; ¶ 47(c), Box 31, p. 55; ¶ 48(e), Box 32, p. 58; ¶ 49(c), Box 33, p. 59; ¶ 51(a), Box 35, p. 63, ¶ 52(b), Box 36, p. 64; ¶ 53(b), Box 37, p. 65; ¶ 54(c), Box 38, p. 67; ¶ 55(c), Box 39, p. 69; ¶ 56(b), Box 40, p. 70; ¶ 58(c), Box 42, p. 74; ¶ 61(e), Box 45, p. 79; ¶ 62(a), Box 46, p. 80; ¶ 64(a), Box 48, p. 81; ¶ 66(a), Box 50, p. 83; ¶ 67(d), Box 51, p. 85; ¶ 68(a), Box 52, p. 86; ¶ 69(a), Box 53, p. 87.

allegedly offered from "about 1998 to 2002" (p. 12, 14-15)(See Exh. K-9), "facts" which are used by Judges Bertelsman, Rogers and Sutton in their 2/14/08 Opinion to affirm convictions and sentences.

736. Once Marcusse obtains the bank records from Agent Corcoran on 1/9/13, she files a second or successive §2255 motion at the Sixth Circuit on 1/9/14 in which she seeks to submit new or previously unavailable evidence proving prosecutorial misconduct and showing innocence in that she did in fact, contrary to AUSA Gezon's rebuttal closing arguments, invest in the products promised (See Exh. L-9).

737. On 9/12/14, Judges Guy, McKeague, and Donald of the Sixth Circuit deny authorization to file a second or successive §2255 motion to vacate by holding she "merely rehashes claims that she raised in her initial §2255 motion"; that in regards to the over 99,000 pages of documents that are still being withheld, "Marcusse merely speculates that the documents are exculpatory due to Special Agent Corcoran's statement in his affidavit that they were not introduced at trial because they did not substantially support or advance the government's legal theory"; and in regards to her allegation the documents "include evidence regarding investments that she made with the victims' money", which in her petition she alleges, "the wire transfer documents are now available to prove AUSA Gezon was lying in his rebuttal closing arguments where he averred <u>no</u> bank records were available to support any investments made in the Bahamas program" (See Exh. L-9, p. 20), this judicial panel now holds, "evidence regarding these investments was collateral to the proceedings", which is <u>not</u> the same as that held to be a "collateral matter" in Judge Bell's 5/27/04 Opinion (See Exh. Q-4), where he held it was the "<u>failure</u> of certain alleged investments" that was a "<u>collateral</u> <u>matter</u>" or irrelevant to the trial (Exh. Q-4, p. 3-4), which signifies this panel changed the "facts", legal rulings, and evidence used to secure convictions to rely solely upon GX-1 <u>after</u> the Forrester scandal broke in the media and the IRS was forced to provide the bank records to Marcusse, further demonstrating the crime charged continues to be moving target to the present date (See Exh. M-9).

738. After having served 11 years of a 25-year sentence, Marcusse, at a minimum, deserves to know <u>WHY</u> she is in prison, and the cover-up of the alleged felonious activity of a former FBI Agent does not suffice.

739. Other alleged felonious activity in which Gerard "Jerry" Forrester has been involved includes offering $10,000 in cash to young women to make false rape accusations against Peter Nygard (See Exh. N-9). Criminal charges for conspiracy and extortion have been filed in the Bahamas against Jerry Forrester for this and other activity (See Exh. O-9).

740. A March 3, 2014 article even alleges Jerry Forrester was involved in a murder for hire in the May, 2010 unexplained death of Louis Bacon's "house worker" Dan Tuck-

field, whose lifeless naked body was found floating in the property's pool. Tuckfield, said to be "illegally working in the Bahamas", was allegedly trafficking in cocaine and involved in "tax cons", with a cover-up of his death alleged by a note claiming, "FBI Helping Police". Tuckfield's cause of death was listed as "coronary artery disease", except the body is reported to have been "showing signs of decomposition" with the recorded time of death clashing with when his body was discovered (See Exh. P-9).

741. Jerry Forrester, "the FBI's Miami liaison officer in the Caribbean in the 1990s" (See Exh. Q-9), retracts his statements caught in secretly recorded conversations, admitting he's a liar, claiming that while he had to explain to Attorney General Janet Reno how a suspect, who was killed in police custody in the Bahamas, "made it to Nassau in the first place", Forrester says, "Janet Reno never answered back (following his explanation), so I guess what we do, kidnapping...must have been legal" (See Exh. R-9, S-9, T-9, U-9).

742. According to one source, Jerry Forrester worked for the FBI for 30 years, from 1971 to 2001, which also reports he was the Vice President of Crystal Palace Casino, Vice President of Security for Cable Beach Resorts, and Vice President of Bahamar Development, with the positions all ending in 2011, coinciding with the scandals about him erupting all over the media. Forrester is now President at Caribbean Investigations in the Miami-Fort Lauderdale Area, specializing in Gambling & Casinos (See Exh. V-9).

743. A House Report from 2003-2004, No. 108-414, Part 1, 108th Congress, which was before Marcusse's 2005 trial, entitled "Everything Secret Degenerates: The FBI's Use of Murderers as Informants", contains Jerry Forrester in a 5-11-81 entry (See Exh. W-9).

744. A February 5, 2001 Senate Report, "Correspondent Banking: A Gateway to Money Laundering", discusses a $10 million CD transaction in 1998 with British Trade and Commerce Bank ("BTCB"), who used SSBT as a "correspondent account", in which SSBT did not place the funds in a CD but a mutual fund that lost value, causing a $2.2 million loss. Additionally, funds were transferred to Union Bank of Switzerland ("UBS"), without the client's knowledge. The Report discloses, "Bahamian bank regulators provided a September 15, 2000 letter stating that an external audit of SSBT had 'ruled out any possibility of irregularity on the part of [SSBT].' However, neither the government nor SSBT would produce a copy of the audit report" (p. 341). The Report concludes the activity "illustrate[d] problems", including "possibly fraudulent promises to pay extravagant returns and possibly misuse of investor funds" (p. 342)(See Exh. X-9).

745. The first page of the February 5, 2001 Senate Report indicates it was a

"year-long investigation by the Minority Staff of the U.S. Senate Permanent Subcommittee on Investigations, under the leadership of Ranking Democrat Senator Carl Levin" of Michigan [emphasis added](See Exh. X-9).

746. Less than one month before, on January 10, 2001, Senior Supervisory Agent Gerard Forrester, "the FBI's Miami liaison officer in the Caribbean in the 1990's" (See Exh. X-8, Q-9), had written his second endorsement letter of SSBT in which he attests, "Since the existence of SSBT, they have not been the subject of any FBI investigations" (See Exh. F).

747. Contrary to Federal Reserve official Leonard Zawistowski's admission at trial on May 19, 2005, that "we", presumably referring to his employer, "collapsed" the Class B banks in the Bahamas in 2001 (See ¶ 681, supra), in response to a June 6, 2006 FOIA request for documents on SSBT, Margaret McCloskey Shanks of the Federal Reserve on August 9, 2006 finds no responsive documents (1:12-cv-1025, D.D.C., R. 16-3, p. 6, Exh. C, D)(See Exh. Z-9).

748. In response to a June 17, 2011 FOIA request on SSBT, Jeanne M. McLaughlin of the Federal Reserve on June 30, 2011 responds that SSBT "was liquidated in 2001", including a "partial copy" of the August 4, 2002 Provisional Liquidator's Report (Id., Exh. A, B)(See Exh. Z-9).

749. In her August 17, 2012 Declaration in response to the FOIA litigation, Jeanne M. McLaughlin attests in regards to the 2006 response, "The processing notes further state that publicly available information from www.google.com indicated Suisse Security Bank & Trust had its license revoked by Bahamian authorities after an investigation into improper loan transactions, possibly involving insiders of the bank. The processing notes state that the bank did not have any U.S. operations, and that news articles did not indicate that U.S. authorities had been consulted or involved in any way in the investigation or closure of the bank" (Id., p. 6)(See Exh. Z-9).

750. The United States Senate Report of February 5, 2001 was a publicly available document and prepared by the "Minority Staff of the U.S. Senate Permanent Subcommittee of Investigations" (See Exh. X-9).

751. There is no information to suggest "improper loan transactions" were involved in the license revocation of SSBT. Rather, the publicly available information in the August 4, 2002 Provisional Liquidators Report states "insiders of the bank", the Harajchi's, stole $17.7 million from SSBT by closing SSH between February 2 and 5, 2001, and closing SSI on April 24, 2001, breaking into the bank on April 9, 2001, except by providing only a "partial" copy of this report, omitting pages 10-33, the details provided on page 32 that Michel Harajchi is the sole shareholder of SSI and SSH, which was closed before February 5, 2001, holding "balances of the Bank and its clients" (See Exh. W-1), McLaughlin keeps it from consideration by the court.

752. As Exhibit B to Jeanne McLaughlin's Declaration of August 17, 2012, she includes her June 30, 2011 response to Marcusse in which pages 1-9 of the August 4, 2002 Provisional Liquidator's Report are derived from Marcusse's own "evidence packs" filed on June 14, 2005 under Dkt. No. 422-4, p. 9-19 in Case No. 1:04-cr-165, which AUSA Schipper obstructs from admission during her testimony (See ¶ 629, supra)(1:12-cv-1025, D.D.C., R. 16-3, p. 14-24)(See Exh. Z-9)(Compare to Exh. W-1).
753. Public information available online at http://www.kycnews.com (Know Your Customer), which was filed in the "evidence packs" and entitled "FBI Special Agent Gerard M. Forrester supports SSBT", advises, "KYC News has confirmed that both of the letters are genuine. Forrester retired from the FBI shortly after writing them to operate as a private investigator in Florida" (1:04-cr-165, R. 392-2, p. 16)(Exh. Z-8).
754. Public information available online at http://www.offshorebusiness.com, which was filed in the "evidence packs", discusses the Forrester endorsement letters of SSBT sent to the Central Bank that "were leaked to newspapers" in a March 31, 2001 article (Id., R. 422-4, p. 5)(See Exh. E). This was only a few pages before the August 4, 2002 Provisional Liquidator's Report McLaughlin took from the "evidence packs" for her June 30, 2011 response.
755. Public information available online at http://www.bahamasuncensored.com/june03.htm, entitled "The Suisse Security Judgment", reports, "The Judge [Justice Austin Davis] said that Suisse Security was also in clear breach of the law by having client funds deposited into two International Business Companies rather than the bank as customers as intended" (See Exh. A-10).
756. Public information available online at http://www.thenassauguardian.com, on October 25, 2005, "Last Tuesday, Justice Vera Watkins granted SSBT a stay of Petition to wind up the bank." "Twenty-one million dollars has allegedly been placed in two companies, mainly Suisse Security Holds (SSH) and Suisse Security Investments (SSI). Both companies were controlled by Mohammed and Michel Harajchi and transferred to Switzerland"(1:09-cv-913, R. 34, Exh. TTTT)(See Exh. B-10).
757. Public information available online at http://www.ssbtinliquidation.com, the Fourth Report of the Provisional Liquidator dated December 20, 2005; the First Report of the Official Liquidator dated December 15, 2006; and the Second Report of the Official Liquidator dated March 31, 2008; demonstrated SSBT was not "liquidated" in 2001 as Jeanne McLaughlin represents to the court (See ¶ 748, supra)(See also Exh. G-9, p. 2, Third Report of Official Liquidator dated July 12, 2011).
758. Public information available online at http://www.the nassauguardian.com, in a July 20, 2001 article, SSBT lost its case against the Central Bank of the Bahamas, which revoked its license earlier this year "amidst allegations of money laundering" (Id., R. 563-7, p. 1)(See Exh. C-8)(See ¶ 633, supra).

759. Also available in the "evidence packs" and publicly available online is the August 24, 2000 article at http://www.tax-news.com entitled, "Former Bahamas Attorney General Says Blacklisting Was Orchestrated", where Paul L. Adderley is quoted, "Eight months at least ago our friends the United States, Canada and Great Britain ought to have told us that as a matter of global international policy they wished to eliminate the concept of the tax haven and its companion bank confidentiality", and that after the Financial Action Task Force ("FATF") published its list of 15 nations deemed to be uncooperative in the fight against money laundering in June, 2000, "weeks later the U.S. Treasury adds fuel to the fire by issuing an advisory that there were serious deficiencies in the counter money laundering systems of the Bahamas" (Id., R. 422-3, p. 25-26)(See Exh. C-10).

760. Also available in the "evidence packs" and publicly available online is the November 17, 2000 article at http://www.tax-news.com, entitled "Bahamas: Finance Minister Praises New Law Giving Central Bank Extra Powers", in which it is disclosed, "The new law allows the Central Bank Governor and foreign inspectors to conduct on-site and off-site examinations of the accounts of bank branches or subsidiaries in the Bahamas", awarding the Central Bank's Governor the power to "invalidate the licence of a bank or trust company" (Id., R. 422-3, p. 27)(See Exh. D-10).

761. Also available in the "evidence packs" and online is the article by Marshall J. Langer, "Harmful Tax Competition: Who Are the Real Tax Havens?", discussing OECD, the Organization of Economic Cooperation and Development, a Paris-based organization of 29 of the wealthiest countries in the world, including the United States, which he describes as a "cartel", identifying the most important tax haven in the world as Manhattan, and calling the "Blacklist" on which countries like the Bahamas was placed "arbitrary" (Id., R. 422-5, p. 9-17)(See Exh. E-10).

762. Also available in the "evidence packs" and publicly available online at http://oecd.org, is the September 27, 2000 notice of a meeting, "FATF to Expand its Anti-Money laundering Campaign and Review of Non-Cooperative Countries and Territories" to include "Non-Profit Organisations and Links to Terrorist Financing" (Id., R. 422-5, p. 18-20)(See Exh. F-10).

763. Also available in the "evidence packs" and publicly available online is the Statement of Congressman Ron Paul of Texas on October 19, 2000, "Threats to Financial Freedom" in which he discusses the OECD and FATF as "a sort of financial Gestapo that pronounces who is legal and who is not legal in terms of money laundering activity...All of these organizations are self-appointed and don't have any more standing than the International Tennis Association as far as legal capacity to impose their decisions" (Id., R. 422-3, p. 31-34)(See Exh. G-10).

764. Also available publicly online at http://www.tax-news.com is the November 28

2000 article, "Bahamas Blacklisting Down To Drug Trafficking and Offshore Funds, Say Politicians", in which the Bahamian Minister of Economic Affairs, Carl Bethel, states, "the Bahamas' blacklisting was due to the loss of control of funds placed offshore." "In the case of France, he said, if one billion dollars are siphoned off to offshore centres around the world, that means that the French government is unable to access that money. He continued: 'That's a billion dolars they cannot borrow from their financial markets'" (Id., R. 563-11, p. 1)(See Exh. H-10).

764. Jeanne McLaughlin's Declaration of August 17, 2012, is after the numerous articles became available on Agent Gerard Forrester and his role in SSBT as a paid consultant can be found on his website, http://jf-investigations.com, except she can find no responsive documents to Marcusse's allegations in the FOIA litigation proper searches were not made to conceal governmental wrongdoing regarding the role of "the Federal Reserve or any other known governmental agency, domestic or foreign" may have had "in the failure of SSBT" (1:12-cv-1025, R. 16-3, p. 26)(See Exh. Z-9).

765. Jeanne McLaughlin's Declaration of August 17, 2012 corroborates David Hardy's January 11, 2013 Declaration representing, "Marcusse was a co-founder and leader of the Access Financial Group, the cover organization for a multi-million dollar Ponzi scheme in effect from 1998 until 2001, when the scheme collapsed" (Id., R. 25-1, p. 12, ¶ 58), when both McLaughlin and Hardy withhold all evidence of governmental wrongdoing in regards to Agent Forrester and SSBT.

766. The "facts" underlying the mail fraud counts in Marcusse's criminal case have changed at least 8 times, including back and forth between a "ponzi scheme" and other accusations, over the course of the investigation and prosecution varying in response to her defense and as previously unavailable or new evidence is obtained and submitted, which shows the charges have been knowingly false and fraudulent from before an indictment was obtained, particularly when the "facts" can be shown to vary based on the defendant from the same trial and jury verdicts.

767. A "ponzi scheme" is specified as the mail fraud scheme to defraud in FBI Agent Moore's December 5, 2003 Affidavit to the Criminal Complaint (1:04-cr-165, R. 2)(See Exh. A-2).

768. The words "ponzi scheme" do not appear in the July 29, 2004 indictment or October 26, 2004 superseding indictment (Id., R. 24, 108).

769. On May 16, 2005, AUSA Schipper begins the trial, specifying the charge as a "Ponzi scheme" (See ¶ 387, supra)(See Exh. I-5).

770. A "ponzi scheme" is mentioned over 116 times at trial with the word "ponzi" used over 50 times by itself, with court documents mentioning the term at least another 50 times.

771. The term "ponzi scheme" is used 8 times at the Marcusse detention hearings (Id., R. 178, TR 123; R. 179, TR 8, 9, 15, 23; R. 180, TR 6); 9 times in the Government's Trial Brief (Id., R. 297, p. 4, 9, 18, 28, 47); and 3 times by Ed White prior to trial in the Grand Rapids Press, on July 9, 2004 (See Exh. D-2), August 5, 2004 (See Exh. S-2), and August 10, 2004 (See Exh. I-10).

772. A week into the trial, after Diane Boss is threatened with a 25-year sentence (1:06-cv-694-RHB, R. 11, p. 3), which is over the statutory maximum allowable, but she and her husband, Wesley Boss, plead guilty, in a May 25, 2005 article, Ed White reports the Bosses plead guilty and the government calling it a "Ponzi scheme" (See Exh. J-10).

773. Where AUSA's Gezon and Schipper repeat the inflammatory charge "ponzi scheme" dozens of times for its incredibly prejudicial effect, but AUSA Gezon withdraws it as an "element" from jury deliberation in rebuttal closing arguments because the words did not appear in the indictment, it is exposed as a deliberate tactical manuever to have omitted it from the indictment, in order to be able to avoid acquittals where both men knew the competent and reliable evidence, if it could not be fully obstructed, would prove legitimate investments had been made (See ¶¶ 577-78, supra)(See Exh. S-7).

774. In the jury instructions, the only theory of prosecution described is "the right to honest services and the right to decide how one's money is spent" in support of the "element" of a "scheme or artifice to defraud", showing Judge Bell's amendment of the charges accordingly (1:04-cr-165, R. 522, TR 3757)(See Exh. K-10).

775. In rebuttal closing arguments, after having specifically and voluntarily withdrawn the "ponzi scheme", AUSA Gezon attests Marcusse made false representations by promising investors a 3% high yield investment product in which she did not invest (See ¶¶ 578-79, supra)(See Exh. S-7), which is commonly known as a "right to control spending" theory under honest services fraud (See Exh. L-10).

776. In a November 4, 2004 Order, Judge Bell states the "Sixth Circuit's Pattern Criminal Jury Instructions" would be used (Id., R. 113, ¶ 7). At the May 5, 2005, Judge Bell again states the standard Sixth Circuit jury instructions would be used (Id., R. 651, TR 15).

777. The pattern jury instructions at the time for the Sixth Circuit for mail fraud include four elements that must be proven beyond a reasonable doubt, require the scheme to defraud to be described, and qualify that the "'scheme to defraud' must be a 'scheme to defraud in order to obtain money or property'" because the two phrases scheme to defraud or for obtaining money or property are not to be construed independently (See Exh. M-10, p. 5). The Sixth Circuit pattern mail fraud jury instructions do not cover the intangible right to honest services in 18 USC §1341

(See Exh. M-10, p. 4).

778. The jury instructions given by Judge Bell following the description of the scheme to defraud as "the right to honest services and the right to decide how one's money is spent" disregard this prohibition (See Exh. K-10, M-10).

779. As soon as guilty verdicts are obtained from the jury on this revised charge, which are predicated upon AUSA Gezon's withdrawal of the "ponzi scheme" and Judge Bell's acquiesence to Gezon's statement, "you will not hear the word Ponzi scheme coming from the Judge's instructions" (See Exh. S-7), AUSA Gezon is quoted by WOOD 8 TV in two headline articles, "Eight people found guilty of stealing millions from hundreds of investors" (See Exh. N-10), and "Eight people now convicted in investment scheme" (See Exh. O-10), again calling it a "ponzi scheme", but this time falsely representing it as jury-found "fact".

780. In the absence of putting the "ponzi scheme" to jury deliberation, or Marcusse admitting to having operated a "ponzi scheme, neither of which occurred, the court of appeals could not affirm the mail fraud convictions on legal and factual grounds not submitted to the jury.

781. As Kaczor argues in closing, "I try not to respond to everything that Mr. Gezon has said, but one thing I have to say very, very clearly. Very, very, very, very clearly. Mrs. Marcusse was on the stand for about a day and a half, and she testified about a lot of things. But she never, she never, ever said that she was involved in a Ponzi scheme. And I think Mr. Gezon misspoke when he said that even Mrs. Marcusse admitted she was involved in a Ponzi scheme. She never, ever, ever said that. In fact, she completely denies any involvement in a Ponzi scheme" (Id., R. 521, TR 3580-81)(See Exh. P-10).

782. Additionally, there was no evidence to support GX-1 was promised relevant to any of the 39 mail fraud counts (See ¶¶ 581, 586-87, supra), nor can AUSA Gezon's arguments in rebuttal closing that "late" investors were promised GX-1, when this is a material misrepresentation of the investor testimony, be considered evidence. (See ¶¶ 579-581, supra).

783. By arguing in rebuttal closing that "early" investors were promised GX-1 (See ¶ 579, supra), AUSA Gezon seeks to use the conspiracy to commit mail fraud charge to enlarge the dates covered by the 39 mail fraud counts to include 1998 and early 1999 as well, in violation of the Settlement Stipulation, GX-380, made between AUSA Pixler and George Besser as the signatory of Valley Boyz, agreeing Besser was the "innocent" victim of a prime bank investment fraud (See ¶ 19-23, supra)(Exh. I).

784. Marcusse, as a pro se defendant, was unduly limited by the government's "protection" order (See ¶ 298)(See Exh. H-4), in which the trial exhibits could not be kept after the trial, and Judge Bell would not provide her with copies of them

on direct appeal (Id., R. 660), or the §2255 motion to vacate (1:09-cv-913, R. 2, 9).

785. George Besser, who was already 66 years old at the time of trial, plus mistreated, including by having his thyroid medication withheld, causing a seizure, has consequently suffered from severe memory problems, a condition that continues unabated where the Bureau of Prisons refuses to properly treat his thyroid and heart problems, causing him to be of no aid to Marcusse (See ¶¶ 286, 397, supra).

786. The attorney, Thomas Connelly, who at the recommendation of the Office of U.S. Attorney in Phoenix, represented Besser for the Settlement Stipulation, GX-380, cannot be located. A letter sent via certified mail on January 27, 2011 was returned (See Exh. K).

787. In her initial request for defense witnesses, Marcusse asked for Thomas Connelly (1:04-cr-165, R. 379), except Kaczor advised Judge Bell demanded she reduce her list, causing her to remove Connelly.

788. Where Marcusse was unable to obtain copies of many of the government's trial exhibits until she sued in the FOIA litigation, she did not have GX-380 until provided by IRS Agent Corcoran on January 9, 2013 in response. Once obtained, GX-380 was heavily redacted (See Exh. I). Given the age of the case, 1999, its files had to be retrieved from storage before the U.S. District Court in Phoenix and fees paid before copies of relevant documents would be supplied.

789. At trial, AUSA Gezon acts to invalidate the Settlement Stipulation contract, GX-380, agreeing Besser was the innocent victim of prime bank fraud, by having AUSA Pixler testify Besser lied when he signed GX-380 by claiming the money was personally his and not the aggregated funds of others, which would have been self evident from the name, Valley Boyz Investment Club, LLC, suggesting an escape hatch built into the contract by the government (1:04-cr-165, R. 473, TR 758-63, 770-74)(Exh. Q-10).

790. Once an unredacted copy of GX-380 is obtained, Paragraph 1, which had been removed, states, "As the result of direct communication between <u>counsel for Claimant</u> and an Assistant U.S. Attorney...the parties do hereby agree to settle and compromise the above-entitled action upon the terms indicated below" [emphasis added] (See Exh. J, p. 2-3; Compare to GX-380, Exh. I, p. 2-3).

791. Paragraph 2 of the unredacted copy, which was removed in GX-380, states that on or about May 15, 1999, the contents of bank accounts were seized "at a correspondent bank account for the Royal Bank of Scotland, International at the CoreStates Bank, in Philadelphia" (See Exh. J, p. 3; Compare to GX-380, Exh. I, p. 3).

792. At trial, AUSA Gezon suborns the perjury of investor Dennis Vandenbergen to aver the funds for the Valley Boyz Investment Club, LLC, which were initially deposited in F & M Bank in Appleton, Wisconsin, were moved to "Suisse Bank in the Bahamas" (Id., R. 473, TR 704)(See Exh. R-10), presumably to invent support for Besser's use of SSBT to engage in prime bank fraud, yet allow AUSA Gezon to make the

false representation in rebuttal closing that Marcusse had no bank records to prove investments were made in the Bahamas "CD" Trading Program (Id., R. 522, TR 3721) (See Exh. Y-6)(See ¶ 510, supra).

793. Investor Dennis Vandenbergen submits no bank records in support from the Valley Boyz Investment Club account at F & M Bank because they would have proven he was lying.

794. The Verified Complaint filed on February 15, 2000 by AUSA Pixler states in Paragraph 240 that George Besser "executed his portion of the document" for participation in the "Isle of Man Program" on "April 13, 1999, as a Director of Valley Boyz Investment Club, LLC, 1215 North Hickory Farm Lane, Appleton, Wisconsin 54914", with Paragraph 241 stating that on April 14, 1999, "Besser caused to be transferred by wire the sum of $1,000,000 to account number 39154038 at the Midland Bank PLC, Market Place W063AA, Easingwald North Yorkshire, England" [emphasis added](See Exh. H, p. 91).

795. The Settlement Stipulation, GX-380, shows as Claimant, "And the Interest of George T. Besser, d.b.a. Valley Boyz" (See Exh. I, J, p. 2), demonstrating AUSA Pixler and attorney Thomas Connelly collaborated together to remove the "Investment Club" part of the name to provide the means for the Office of U.S. Attorney to dishonor the contract before even signing it.

796. The Verified Complaint contains in numerous places the full name, Valley Boyz Investment Club, including on page 103, which contains the title, "GEORGE T. BESSER d.b.a. VALLEY BOYZ INVESTMENT CLUB" (See Exh. H, p. 91, 103-104).

797. Page 6 is removed from GX-380 in which the names of the individuals described as "co-conspirators in this fraudulent enterprise referred to as the Isle of Man Program" on page 6 of the Verified Complaint are listed (See Exh. H, I, J). While many of these individuals were criminally prosecuted, one individual playing a major role in this prime bank fraud was left unmolested--Leslie Wingham, Accord Insurance and Accord Trading (See Exh. H, p. 6, 69, 94, 129, 133-136).

798. In his February 15, 2000 Verified Complaint, AUSA Pixler alleges, "Duane HENNEMAN, one of the men responsible for the aggregation of the funds at Midland Bank, has admitted to investigators that there was no 'trader' associated with the Isle of Man Program, no trading had ever been undertaken, and that no profits were ever earned. HENNEMAN also indicated that the Isle of Man Program was operated by LESLIE WINGHAM and DEREK FOWLER and that the role of HENNEMAN was only that of a 'front' for the actions of the others. HENNEMAN also indicated that both WINGHAM and SCHOR were aware from the beginning that there was no Dr. Robert E. Bruce and that HENNEMAN was signing his name on the contractual documents for the Isle of Man" (See Exh. H, p. 69).

799. On pages 133-136 of the Verified Complaint, AUSA Pixler charges LESLIE WINGHAM

and others with wire fraud in violation of 18 USC §1346 and money laundering in violation of 18 USC §1956 and §1957, averring, "Absolutely none of the funds provided by any of the investor/victims...was ever invested in any form of special trading program, because no program ever existed. Control over these funds was obtained by fraud" (See Exh. H).

800. There was no reason for AUSA Pixler to lie about "Valley Boyz Investment Club, LLC" by having deleted the "Investment Club, LLC" part, except to invent the means to negate the benefits of GX-380 to Besser, where Pixler states in Paragraph 415 of the Verified Complaint, "Plaintiff asserts that no interest of an innocent victim, without knowledge of the fraud, referred to herein as the 'High Yield Investment Program', or generically referred to as Prime Bank Instrument fraud, is subject to forfeiture, provided only that the victim did not aggregate funds from others for a <u>fee or commission</u>; there is a legitimate, i.e., non criminal source for the funds; and the person identified as a victim has not assigned the victim's interest in the above described funds to another, specifically including any of the co-conspirators named herein" [emphasis added](See Exh. H, p. 135).

801. Investor Dennis Vandenbergen testifies that after Marcusse called him, telling him there had been a problem with the Isle of Man trade, "an equivalent amount of money to what the investment people in the club had put in" was wired into F & M Bank, and his partner, Dave Richter "wrote checks back to all of the participants for their money" (Id., R. 473, TR 706)(See Exh. R-10).

802. The first letter written by Senior Supervisory Agent Gerard Forrester was on February 11, 2000, around the same time as AUSA Pixler's Verified Complaint is filed on February 15, 2000 in Case No. 2:00-cv-00291-LOA in the U.S. District Court in the District of Arizona, with Forrester admitting his letter was in response to an article that appeared in a "tabloid called 'Offshore Alert' which maligned his bank", referring to Mohammed Harajchi and SSBT (See Exh. F).

803. According to a March 31, 2001 article in "Offshore Alert", "The first letter was written by Forrester shortly after Offshore Alert published an article about SSBT's apparent lack of due diligence in taking over the accounts of the crooked Antigua-based <u>Accord Insurance</u>, which offered investors 'guaranteed' returns of up to 20 per cent per month. Not long after SSBT took over Accord's accounts from Antigua-based Eurofed Bank, which was closed by regulators, Accord collapsed with clients claiming to have been defrauded of millions of dollars" [emphasis added] (R. 422-4, p. 5)(See Exh. E). Accord Insurance is not named in Forrester's letter.

804. In other words, in spite of a federal investigation dating back at least a year as May 15, 1999 is when the Valley Boyz funds were seized, Agent Forrester

endorses Mohammed Harajchi and his bank, SSBT, to lull its clients, Besser and Marcusse, and by extension their investors, into a false sense of complacency that no criminal activity, specifically defined as prime bank investment fraud, was occurring at SSBT, when Forrester knew, or should have known, that his representations were false and fraudulent.

805. In light of the foregoing facts, Besser, and by extension, Marcusse, where a conspiracy is charged, are entitled to the protection afforded by being deemed the "innocent" victim of prime bank investment fraud, causing the use of GX-1 prior to June, 1999, at which time it was replaced with the Bahamas program, to be exempt from criminal prosecution, and affording no right for the Office of U.S. Attorney in the Western District of Michigan or Judge Bell to find a "ponzi scheme" based on it being used as a term of art defined as a nonexistent prime bank instrument, such as that described in GX-1 where there was no evidence GX-1 was used past June, 1999 (See ¶¶ 540-553, 581-588).

806. Nonetheless, after the trial, under the signatures of U.S. Attorney Margaret Chiara and AUSA Gezon, in the Government's Response to the Motion for Acquittal, it is argued "guilty knowledge" was proven by the defendant being a "participant of an investment organization that was a ponzi scheme" (Id., R. 481, p. 11).

807. On September 22, 2005, Judge Bell denies the motions for judgment of acquittal by finding for Counts 1-39, Mail Fraud, the "evidence" showed "Access Financial Group was a Ponzi scheme', "the intent to defraud in a Ponzi scheme 'is not debatable'", and the "jury could reasonably infer an intent to defraud on the part of the Defendants from their operation of a Ponzi scheme", with a "Ponzi scheme" also being found as the crime to support Counts 43-57, the "promotional" money laundering charges (Id., R. 491, p. 4-5, 11).

808. On October 18, 2005, the Grand Rapids Press reports George Besser, "a frail man in his 60s", who was sentenced to a 20-year prison term, "could die in prison", however, he "got a break of sorts because U.S. Chief District Judge Robert Holmes Bell could have ordered a life term" based on Access Financial, which was a "Ponzi scheme that either recycled or misspent investors' money" (See Exh. S-10).

809. The statutory maximum in this case was 20 years, according to Magistrate Ellen Carmody, before the trial on March 14, 2005, based on the superseding indictment (Id., R. 241, p. 2)(See Exh. J-8, p. 2).

810. Dan Broucek, who pleaded guilty to operating a $130 million Ponzi scheme for almost a decade, was sentenced by Judge Bell to 7 years in prison, according to a November 1, 2004 article in the Muskegon Chronicle (See Exh. U-10).

811. On June 24, 2005, the Sixth Circuit held Dan Broucek's sentence of 84 months exceeded a guideline range of 63 to 78 months (See Exh. V-10).

812. Ed White of the Grand Rapids Press reports on Marcusse's sentencing to 25 years on October 28, 2005, quoting AUSA Schipper, who "said he had looked up 'heinous' in the dictionary to describe Marcusse's crimes", a "Ponzi scheme", but admitting, "the punishment 'is really off the charts. There's nothing even close" (See Exh. W-10). White characterizes Marcusse's right to speak at her sentencing as "rambling monologues" (See Exh. W-10), disregarding her objections that she was denied the use of bank records and witnesses to prove she was innocent to the "Ponzi scheme" charge because in the Sixth Circuit, the "intent to defraud" is "not debatable"; that she, and as the result her investors, were scammed by Agent Forrester's lulling letters about SSBT prior to its collapse where today $31 million remains missing; and that AUSA Gezon solicited IRS Agent Flink's perjury to invent $600,000 in "bogus income" by claiming Marcusse was the "sole owner" of Worldwide E Capital (Id., R. 639, TR 8-11, 16-18)(See Exh. H-8). White calls Marcusse "[c]ocky and arrogant to the end", having been "ejected from court without hearing her sentence", lying about the reason it occurred to allow for the inference it was her "rambling monologues" at fault by omitting the attack by U.S. Marshals in trying to break Marcusse's fingers, instead blaming their violence on her by reporting, "Deputy Marshals grabbed Marcusse, locked her in handcuffs and removed her after she ignored [Robert Holmes Bell]'s order to remain silent" (See Exh. W-10)(Compare to Id., R. 639, TR 46)(See Exh. H-8).
813. On October 28, 2005, a Press Release is issued by U.S. Attorney Chiara, and AUSA's Gezon and Schipper, in which GX-1 is used to base the charges by describing the "Scheme to Defraud" as "an investment scheme which they claimed was secret and unavailable to the general public" where "the investors' money funded highly profitable financial activities in international markets not accessible to the average investor", with the "subsequent investigation show[ing] that the alleged international trading markets touted by the defendants did not exist" (See Exh. X-10, p. 2-3), which disregards the fact there was <u>no</u> evidence to show even one investor was promised GX-1 relevant to any of the 39 mail fraud counts (See ¶¶ 581-587, supra).
814. For the Press Release directed to investors, a group not invited to attend the trial (See ¶¶ 589-591, supra), the story changes from that told to the jury, from the investigation beginning in March, 2001 (See ¶ 147, supra), to, "In late 2001, the scheme collapsed when the defendants ran out of money to pay the monthly interest checks and disgruntled investors notified the authorities" (See Exh. X-10, p. 3).
815. The story changes in the Press Release from at trial where Agent Flink selected 20 bank accounts to show the jury in GX-170 from a total of 70-80 bank accounts investigated (Id., R. 515, TR 2292-93)(See Exh. Z-5), to "investigators searched more than 150 bank accounts to trace the whereabouts of the approximately $20.7 million received by the defendants" (See Exh. X-10, p. 4), which further establishes bank account records were withheld from discovery at trial, as IRS Agent Corcoran admits,

in his 2013 Declaration, but not until the IRS issued (See ¶ 520, supra).

815. The story changes in the Press Release from AUSA Gezon demanding the magistrates deny pretrial release because "millions of dollars are unaccounted for and have been secreted in foreign banks" (See ¶ 176, supra), "investigator" IRS Agent Flink showing $7.3 million of "Other Spending" in his summary exhibit, GX-172, including "foreign wire transfers" and "domestic transfers" (See Exh. Y-10), as based upon the bulk bank record exhibits; and in rebuttal closing, AUSA Gezon referring to these wire transfers to aver to the jury, "she [Marcusse] sent the money somewhere. And quite frankly, ladies and gentlemen of the jury, we'll never know what she did with all that money that she sent over there. But the evidence shows that in this case...[she] spent millions between her and her defendants to live well" (Id., R. 522, TR 3718)(See Exh. Z-10); to the Press Release where Gezon and Flink have figured it all out, "Approximately $7.4 million was spent by the defendants to promote the scheme and to make it appear to be a legitimate investment venture" [emphasis added](See Exh. X-10, p. 4).

816. In the jury instructions, the "element" of "intent to defraud" was based upon the fabrication of spending and income where it is described, "An intention to defraud is accomplished ordinarily by a desire or a purpose to bring about some gain or benefit to oneself or another person" (Id., R. 522, TR 3758)(See Exh. A-11)(See ¶¶ 372-374, 440)(See Exh. F-5, G-5, A-6).

817. The Press Release cautions that investigators were "able to recover little" of the funds sent to Access Financial by investors, but promises, "The United States Attorney's Office Victim/Witness Unit will continue to assist the many victims by locating, collecting and paying back whatever funds may be recovered from the defendants over the coming years" (See Exh. X-10, p. 4). No mention is made of recovering the funds kept by Agent Forrester's "Notable Client" SSBT or the Harajchi's, or of former U.S. Attorney General's friend and campaign contributor, Robert Plaster, which were obtained by defrauding the defendants.

818. The Press Release closes by quoting Maurice M. Aouate, Special Agent in Charge, Internal Revenue Service Criminal Investigations, about Access Financial Group using "false marketing techniques to create a ponzi scheme, designed to enrich the promoters over the investors. The courts have made it clear through these sentences that the American Public will not tolerate this type of financial abuse" (See Exh. X-10, p. 5).

819. Special Agent in Charge Maurice Aouate, U.S. Attorney Margaret Chiara, AUSA's Schipper, Gezon and W. Francesca Ferguson, as well as IRS Agents Flink, Goeman, Boerman and Corcoran, and FBI Agent Moore, all had cause to know it was not the defendants that were the proximate or direct cause of investor losses in this case.

820. On December 9, 2005, approximately a month after Marcusse's sentencing, Judge