EXHIBITS

A-10 to Z-10

From: http://www.bahamasuncensored.com/june03.htm#THE%20SUISSE%20SECURITY

THE SUISSE SECURITY JUDGEMENT

The Judgment of the Court was handed down months ago but the reasons had not been delivered until now. The Suisse Security Bank is owned by Mohammad Harajchi, an Iranian émigré living on Paradise, Island. The bank's licence was revoked by the Governor of the Central Bank. Mr. Harajchi has made personal allegations against the Governor of the Central Bank and he, with his own newspaper, has been engaged in a war demeaning Bahamian political figures over the issue of the revocation of his Bank's licence. The Judge threw the book at the bank's conduct, saying that the conduct was "apparently beyond redemption". Here is a part of what was reportedly said in the Judgment of Justice Austin Davis delivered on Thursday 12th June:

"[Suisse Security's] conduct borders on contempt in its treatment of the Governor. Its actions engendered obfuscation when clarification was required.

"On the totality of the evidence in this case, I am satisfied that the appellant showed a complete lack of appreciation of its responsibilities. I am also satisfied that there is ample evidence to show that Suisse Security has fallen short in its obedience to those responsibilities.

"Suisse Security appears to be establishing its own standard of conduct, which clearly shows the Governor finds to be banking practices he does not wish to see followed. Suisse Security appears to be impervious to the proddings of the Governor and his aides. If drastic action were not taken by the Governor, the situation would have gotten predictably worse."

The Judge also found that Suisse Security was evasive in its dealings with the Central Bank of the Bahamas and failed to disclose that 73 per cent of its capital was at risk. The Judge 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 had intended.

In a statement issued in April, The Tribune reports that Chris Lunn representing the principal shareholder of the Bank said that the decision of the Judge was an outrage and they served notice of the intention to aggressively seek to appeal. *Mr. Lunn, left and Mr. Harajchi, right are shown with their attorney in this file photo.*

EXHIBIT A-10

The Nassau Guardian
Business
www.thenassauguardian.com
TUESDAY, OCTOBER 25, 2005

SSBT wins skirmish

Watkins J denies CB Summons

By C. E. HUGGINS
Guardian Staff Reporter

Name@nasguard.com

The long-suffering depositors of Suisse Security Bank and Trust (SSBT), owned and controlled by Mohammed Harajchi, will have to wait yet again to discover if they will recover any of their money.

Last Tuesday, Justice Vera Watkins granted SSBT a stay of petition to wind up the bank. Since losing its case in the Supreme Court in 2001, when the Governor of the Central Bank under the Bank and Trust Companies Regulations Act 2000 and the Companies Act 1992 moved to have SSBT's licence revoked, a provisional liquidator was appointed to protect the interest of the depositors and secure their money. Twenty-one million dollars has allegedly been placed in two companies, mainly Suisse Security Holdings (SSH) and Suisse Security Investments (SSI). Both companies were controlled, by Mohammed and Michel Harajchi and transferred to Switzerland, where according to counsel for the Provisional Liquidator, Anthony McKinney, the Swiss authorities are awaiting a Liquidation Order.

> "It would render the PC's ruling nugatory"

Thus far, the Harajchis have refused or declined to disclose where the $21 million is located. According to Ms. Hepburn, neither SSBT's principals nor former management, have provided a "satisfactory explanation" about the whereabouts of the $21 million.

Having regard to the length of time it has been taking for the Harajchis to appeal Justice Davis' ruling in 2005, and upholding the Supreme Court revocation of SSBT's banking licence, it appears that the Central Bank, in an attempt to bring closure, applied for The Liquidation Order, which was set for hearing on April 6, 2005.

The move finally forced the Harajchis to take action which they did, stating that they were in fact awaiting a date from the Privy Council and that to wind up SSBT's operations before the Privy Council had made a determination, would be premature.

Derek Ryan appearing for SSBT not only submitted that the Central Bank petition to wind up the business was premature but also for the first time on behalf of his client gave an undertaking to cooperate with the Provisional Liquidator's attorney, to "ensure that the depositors are in a position to retrieve their funds."

The principals of SSBT have steadfastly declined to cooperate with the Provisional Liquidator. In particular, they have refused to reveal the whereabouts of the $21 million, which was transferred from the bank accounts of SSI and SSH to Switzerland.

Sydney Collie who appeared on behalf of some creditors, argued that the Court had the "inherent jurisdiction" to order SSBT to "disclose where the monies are." Mr. Collie urged the court to consider "attaching a condition

■ See SSBT on BR2

■ **Supreme Court:** Watkins J of the Supreme Court (above) granted the SSBT petition against it being wound up as applied for by the Central Bank *File Photo*

Stopping WSC's leaks

By BARRY WILLIAMS
Guardian Staff Reporter

Training is a must for Water and Sewerage Corporation (WSC) employees involved in the non-revenue water (NRW) reduction exercise in order to sustain the system.

Paul Fanner, a water industry specialist, said the purpose of the training was to ensure that the amount of non-revenue water remains at its minimum once the government-run Corporation is left on its own to sustain the systems in place to do this. Mr Fanner was addressing the Rotary Club of Sunrise.

Consolidated Water Company Ltd. (CWCO) is going to build, own and operate the Blue Hills Reverse Osmosis Plant and reduce non-revenue water by one million gallons under a contract it was awarded from WSC in February. Mr Fanner is a consultant to the Cayman-based CWCO and will lead the team that CWCO's Bahamian subsidiary Waterfields Ltd. has put together to address the

■ See Stopping on BR3

NCBMP meets on Paradise Island

By BARRY WILLIAMS
Guardian Staff Reporter

The National Coalition of Black Meeting Planners (NCBMP) will host its second annual fall educational conference in the Bahamas.

This week over 600 professionals covering science, law, education, accounting, business, medicine, as well as fraternal and suppliers". The conference's theme is 'Reaching New Heights Through Partnerships' and mirrors the Ministry of Tourism's (MOT) initiative through its African American Department to strengthen its marketing efforts to African Americans.

MOT's James Malcolm announced this summer that his department was working

EXHIBIT B-10

TAX-NEWS.COM

Saturday, February 26, 2005

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Former Bahamas Attorney General Says Blacklisting Was Orchestrated, Robert Lee, Tax-news.com, London 24 August 2000

In June the Financial Action Task Force (FATF) published its list of 15 nations deemed to be uncooperative in the fight against money laundering, and for those offshore jurisdictions included on the blacklist, the action still rankles. The Bahamas was one of the offshore financial centres featured, and now its former Attorney General Paul L Adderley has weighed in with his views on the now infamous list. His line is that the blacklisting of the Bahamas was one hundred per cent orchestrated, and driven not by enemies but by friends.

Since the publication of the list, the Bahamian Prime Minister Hubert Ingraham and Finance Minster Sir William Allen have taken the helm of a large-scale drive to restore the reputation of the Bahamas in the financial services sector and, ultimately, to get the Bahamas taken off the list. In recent weeks, the two have travelled to the United States and Canada to meet with government and bank officials in order to convince them that the Bahamas is not a haven for "hot money" and that the US Treasury's advisory warning American financial institutions to exercise caution when dealing with the Bahamas is unfounded.

The blacklisting of the Bahamas has naturally featured high on the political agenda since June, and now Mr Adderley has voiced his views at at the first in a series of public fora on the matter. Mr Adderley declared that the US Treasury advisory 'is full of factual and legal mistakes and misrepresentations which I assume the Bahamian government has taken up with our friends in Washington. But that is a full subject in its own right.'

Mr Adderley clearly believes that the Bahamas should reject the idea that the jurisdiction is featured on a 'blacklist'. He said 'The word "blacklist" originates in the foreign press and we pick it up - it is an emotive word and intimidating. Because that is what this matter is all about - intimidating of the weak by the strong. Now no one has been a fiercer defender of Bahamian sovereignty than I since independence. But I have also recognized that all animals are equal but some more equal than others. The sentiment of many that we ought to tell the OECD and FATF and the US. to go to hell is strong, but I do not agree with it. When the hand is in the lion's mouth, take it out slowly. But never panic."

The strongest charge from Mr Adderley is that the whole FATF initiative was orchestrated: '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,' said Mr Adderley. 'They ought to have told us that they wanted the cooperation of the Bahamas; we will give you time to make the necessary political and economic adjustments to protect the jobs of Bahamians in the banking sector and we will help you develop a legitimate financial services regime

* USA
* Vanuatu

with which we can all agree.' He added that might have happened: 'that is not for me to say but there are people in the Bahamas who know.'

According to Mr Adderley, the Bahamas was "strongly advised" by the FATF to adopt measures to improve their rules and practices as expeditiously as possible in order to remedy the deficiencies identified. He said the FATF, in the meantime, recommended that 'financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from the 'non-cooperative countries.' Mr Adderley said that at this stage both the OECD and the FATF had decided that the Bahamas was an uncooperative country.

Mr Adderley concludes that the actions of the FATF were bad enough, but 'weeks later the US Treasury adds fuel to the fire by issuing an advisory that there were serious deficiencies in the counter money laundering systems of the Bahamas. Nowhere in this advisory which goes to great length to identify these deficiencies does the U.S. Treasury mention Exchange of Information with the U.S. in tax matters which was the main thrust of the OECD and FATF reports.'

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Bahamas: Finance Minister Praises New Law Giving Central Bank Governor Extra Powers
Mandy Robinson, Tax-news.com, London
17 November 2000

Earlier this week Tax-news.com reported on proposals for a whole raft of new laws geared towards tightening anti-money laundering regulations within the Bahamas financial services sector and the Minister of Finance William Allen has now commented upon the legislation in an address to the House of Assembly.

In his speech Sir Allen revealed that the Central Bank's Governor will be awarded responsibilities that were previously only performed by himself as part of his role as Minister of Finance - particularly in relation to the issuing and revoking of bank licenses. Under the Banks and Trust Companies Regulations Act 2000, the governor may invalidate the licence of a bank or trust company if it is 'carrying on its business in a manner detrimental to the public interest or the interest of its depositors.'

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, although information or documents procured or produced by foreign inspectors cannot be given out without the prior written permission of the Bahamian Inspector (who would be appointed by the Central Bank Governor)

The decision to invest so much power in the Governor, stressed the Minister, was researched and based upon the standards of other countries: 'We have sought to take account of what is happening in other jurisdictions, we benchmarked the legislation in relation to what several other jurisdictions were doing, in particular Canada, Switzerland and Cayman Islands. In making these adjustments to our legislation we took account of what these other jurisdictions were doing and we benchmarked ourselves against them.'

Stating that the legislation reflects international regulations and supervision standards that have developed over the last few years, the Finance Minister said: 'We believe it is in the interest of The Bahamas - if it wishes to continue as an important, international, financial centre - to operate at this level of best practices which is now emerging as the international standard.'

Harmful Tax Competition: Who Are the Real Tax Havens?

by Marshall J. Langer

The following is the text of a speech Marshall J. Langer presented at a meeting of the International Tax Planning Association on November 20 in New Orleans. Langer, a member of the Florida Bar, resides in England and the Caribbean. He is counsel to Shutts & Bowen in London and Miami. He is the co-author of Rhoades and Langer, U.S. International Taxation and Tax Treaties *(Matthew Bender) and several other books.*

Nearly 20 years ago, in January 1981, Richard A. Gordon, U.S. Internal Revenue Service Special Counsel for International Taxation, submitted a lengthy report to the IRS and the U.S. Treasury and Justice Departments entitled: *Tax Havens and Their Use by United States Taxpayers — An Overview;* it is commonly called the "Gordon Report."[1] Here are a few excerpts from the Gordon Report and my current observations concerning them:

Gordon stated:	*My current observations:*
"The decision of a country not to tax transactions or to attempt to attract offshore financial business is a legitimate policy decision. When local laws and practices deny information to countries whose tax base is being eroded or whose laws have been violated, a situation exists that attracts criminals and is abusive to other countries."	The United States, the United Kingdom, and many other OECD countries have local laws and practices that deny information to other countries and that are at least as abusive as those of the so-called *tax havens.*
"The United States alone cannot deal with tax havens. The policy must be an international one by the countries that are not tax havens to isolate the abusive tax havens. The United States should take the lead in encouraging tax havens to provide information to enable other countries to enforce their laws."	The OECD is a *cartel* of about 30 wealthy countries that has given itself the power and authority to tell the rest of the world how to behave. Its claim that it will also police its own members lacks credibility. This is a matter that should be handled by the United Nations, the IMF, or the WTO, not a self-appointed OPEC-like cartel.
"The term 'tax haven' has been loosely defined to include any country having a low or zero rate of tax on all or certain categories of income, and offering a certain level of banking or commercial secrecy. Applied literally, however, this definition would sweep in many industrialized countries not generally considered tax havens, including the United States (the U.S. does not tax interest on bank deposits of foreigners)."	The United States still does not tax interest on bank deposits of foreigners, nor does it generally require any reporting of these deposits except those paid to Canadian residents. Therefore, it cannot and does not give any information concerning such deposits to any country other than Canada. The United States now also exempts portfolio interest and capital gains, both long-term and short-term, other than real estate gains.

The OECD on the Attack

The Organization of Economic Cooperation and Development is a Paris-based organization of 29 (soon to be 30) of the wealthiest countries in the world. The member countries of the OECD are: Australia; Austria; Belgium; Canada; Czech Republic; Denmark; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Korea; Luxembourg; Mexico; Netherlands; New Zealand; Norway; Poland; Portugal; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States. The Slovak Republic is scheduled to become the 30th member country before the end of 2000.

The OECD is essentially a cartel consisting of the world's richest countries, most of which are high-tax jurisdictions. The OECD has done some excellent work in the field of eliminating double taxation through the dissemination of its model income tax treaty and commentaries. These are now used by both member and non-member countries when they negotiate tax treaties to eliminate double taxation. However, the OECD selects its members in a way that excludes most countries. The OECD's policies are clearly designed to assist its member countries, rather than the world at large. No one other than its own members has ever given it a mandate to tell other countries how to behave. It functions to help its members even if that means harming other countries whose policies are detrimental to those of OECD members. Most OECD member countries are high-tax countries. They abhor any

[1]The 250-page "Gordon Report" is out of print but a copy can be found in Appendix A of Langer, Marshall J., *Practical International Tax Planning* (PLI, 3rd edition, 1985-1999).

non-member country that functions as a low-tax country. The people who run the OECD are government bureaucrats who live in high-tax Paris on tax-free salaries paid for by the taxpayers of the OECD member countries.

In April 1998, the OECD published an 80-page report entitled: *Harmful Tax Competition — An Emerging Global Issue.*[2] OECD member states Luxembourg and Switzerland abstained from this report. The 1998 report was later supplemented by a 30-page report entitled *Towards Global Tax Co-operation* published in June 2000.[3] It named six tax havens that had agreed to cooperate with the OECD and 35 others that were given one year to agree to cooperate or they would face severe sanctions. The June 2000 OECD report conceded that some OECD member-countries had some tax haven attributes and indicated that these member countries would discontinue *these practices* by no later than the year 2005. The report even identified some potentially harmful member country preferential regimes. The problem is that these have been determined based on a self-review of preferential regimes by each of the member countries. The results of this self-review are completely lacking in credibility. For example:

- The United States admits to only one preferential regime — the *foreign sales corporation* — which the WTO has already successfully attacked;
- The United Kingdom does not admit that it has any preferential regimes;
- Switzerland admits only that its *administrative and service companies* may be preferential regimes; and
- Ireland admits to only two preferential regimes — the *international financial services centre* and the *Shannon Airport Zone.*

Not Everyone Agrees

Daniel J. Mitchell, a Senior Fellow of the Heritage Foundation, has written an excellent report sharply attacking the OECD proposal to eliminate harmful tax practices.[4] Mitchell says that this OECD effort " . . . contradicts international norms and threatens the ability of sovereign countries to determine their own fiscal affairs." He adds that the OECD proposal " . . . would create a cartel by eliminating or substantially reducing the competition these high-tax nations face from low-tax regimes."

It does not surprise anyone when I tell them that the most important tax haven in the world is an island. They are surprised, however, when I tell them that the name of the island is *Manhattan*

Congressman Dick Armey, the majority leader of the U.S. House of Representatives (and just reelected to that post for the 2001-2002 Congress), wrote a blistering letter to Treasury Secretary Lawrence Summers in September 2000.[5] He said in the letter that he was deeply concerned by the Clinton administration's active support for the OECD effort to stamp out tax competition, which he described as designed to create a tax cartel. Congressman Armey's position makes it unlikely that the new Congress will carry out the Clinton administration's threat to legislate against so-called uncooperative tax havens.

Many of the countries attacked by the OECD as tax havens probably are tax havens by any reasonable definition. But so are many non-member countries of the OECD that have not been attacked by the OECD because it was not politically prudent for the OECD to do so. Moreover, most OECD countries are themselves tax havens.

No one outside the OECD has empowered the OECD to use its massive economic power to crush tax competition offered by low-tax countries that are not OECD members. Even worse, most OECD member states are guilty of egregious unfair tax competition that is much more serious and harmful than that of which the OECD is complaining. These activities by OECD members have been conveniently ignored in the OECD's self-assessment of harmful activities by its own members.

OECD Member States as Tax Havens

It does not surprise anyone when I tell them that the most important tax haven in the world is an island. They are surprised, however, when I tell them that the name of the island is *Manhattan*.

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[2]The April 1998 OECD report on *Harmful Tax Competition* is available from the OECD Online Bookshop. For details, *see* the OECD Web site at http://www.oecd.org.

[3]The June 2000 OECD report may be downloaded without charge from the OECD Web site at http://www.oecd.org.

[4]*See* Mitchell, Daniel J., "An OECD Proposal to Eliminate Tax Competition Would Mean Higher Taxes and Less Privacy," *Tax Notes Int'l*, Oct. 16, 2000, p. 1799, or *2000 WTD 200-15*, or *Doc 2000-26564 (23 original pages)*.

[5]*See 2000 WTD 177-22* or *Doc 2000-23604 (2 original pages)* for the text of Majority Leader Dick Armey's letter.

Moreover, the second most important tax haven in the world is located on an island. It is a city called *London* in the United Kingdom.

Both the United States and the United Kingdom are, of course, OECD member states. Neither will ever admit that it is an abusive tax haven that aggressively and openly attracts wealth from all corners of the earth.

Bank Deposit Interest

The United Nations defines an *offshore institution* as " . . . any bank anywhere in the world that accepts deposits . . . on behalf of persons legally domiciled elsewhere."[6] U.S. banks have paid tax-free interest to foreign persons for nearly 80 years. Hundreds of billions of dollars of U.S. bank deposits are held in the United States by nonresident aliens and foreign corporations. If the U.S. Congress ever seriously tried to tax the interest paid on these deposits, that money would immediately disappear from U.S. banks and probably move to other OECD countries. Almost every country in the world similarly exempts bank deposit interest paid to foreigners.

A U.S. citizen or resident receiving interest from a U.S. bank deposit must pay federal income tax of up to 39.6 percent on that income. In most cases, he or she must also pay state income taxes. The amount of interest paid to a U.S. citizen or resident is reported annually by every U.S. bank to the IRS.

Anyone claiming to be a nonresident alien or foreign corporation pays zero U.S. income tax on U.S. bank deposit interest. Except for residents of Canada, the amount of interest paid is not even supposed to be reported to the IRS, so the amount of that interest is obviously not being reported to other countries under U.S. tax treaties or tax information exchange agreements.

Hundreds of billions of dollars of tax-free, interest-bearing bank deposits are held in U.S. banks by nonresident aliens and foreign corporations. In 1975, the Joint Committee on Taxation estimated that over US $3.1 billion in interest had been paid to foreign persons during 1974 on over US $36 billion of bank deposits.[7] The amount is undoubtedly much higher today. Many of these deposits may be held by U.S. persons who falsely claim to be nonresident aliens.

Hundreds of billions of dollars of tax-free, interest-bearing bank deposits are held in U.S. banks by nonresident aliens and foreign corporations.

Bank deposits held by foreign persons have been effectively exempt from U.S. income tax since 1921. Until 1986, interest paid by a U.S. bank to a foreign person was nontaxable, under a silly source rule that treated such interest as foreign-source income. That is what the law said — and it said so continuously from 1921 to 1986. Until 1986, the U.S. Internal Revenue Code provided that interest on "deposits with persons carrying on the banking business," received by a foreign person, was foreign-source income if it was not effectively connected with the conduct of a U.S. trade or business. In 1966, this rule was extended to cover interest on deposits with savings and loan associations and insurance companies as well as banks.

Interest paid on deposits with banks and savings institutions is no longer treated as foreign-source income. Since 1986, it has been treated as domestic-source income, but it remains exempt from U.S. tax when received by a foreign person if it is not effectively connected with the conduct of a U.S. trade or business.[8] If interest on the deposit is exempt from income tax, the deposit itself is also exempt from estate tax.[9] Even though the account is not taxable, each deposit up to US $100,000 in an insured U.S. bank is covered by Federal Deposit Insurance Corporation insurance.

Congressional Debate

The Congress has debated the wisdom of retaining the bank deposit exemption on several occasions during the 1960s and 1970s, with varied results. President John F. Kennedy's *Alliance for Progress* was supposed to encourage Latin Americans to repatriate their flight capital and to reinvest it in their own countries. The Latin American governments complained to the United States that U.S. tax law encouraged Latin Americans to invest in the United States. In 1966, Congress decided to impose a tax on bank deposit interest paid to foreign persons but, for balance

[6] *See* Mitchell, Daniel J., note 4 above, at 1805.

[7] *See U.S. Taxation of Foreign Source Income of Individuals and Corporations and the Domestic International Sales Corporation Provisions*, Committee Print Prepared for the Use of the Committee on Ways and Means by the Staff of the Joint Committee on Internal Revenue Taxation, 94th Cong., 1st Sess., at p. 23 (Sept. 29, 1975).

[8] IRC section 861(a)(1)(A) and (c).

[9] IRC section 2105(b)(1).

of payments reasons, it postponed the effective date of such tax until the end of 1972. The effective date was postponed on two other occasions, the last of which was due to expire at the end of 1976. Then, after further debate, the Tax Reform Act of 1976 made the exemption permanent once again.

There have been mixed feelings in Congress on this issue. The banks claim that they will lose much or all of the billions of dollars deposited by foreign persons in interest-bearing bank accounts if the government attempts to tax the interest. On the other hand, U.S. taxpayers are not happy about paying U.S. income tax on income on which foreigners pay nothing. Nevertheless, Congress seems convinced that imposition of the statutory 30-percent U.S. withholding tax would drive most of these deposits out of the United States. They are almost certainly correct.

During 1975 and 1976, Congress debated whether to extend the deposit exemption for three more years or to make it permanent. In November 1975, the House of Representatives voted to make the deposit interest exemption permanent.[10] In 1976, the Senate Finance Committee agreed to follow the House version and make the deposit exemption permanent.

The bill was debated on the floor of the Senate in July 1976.[11] Senators Bob Packwood of Oregon and Ted Kennedy of Massachusetts sought to extend the exemption for only three more years, so that Congress would be forced to review the subject again. During the debate, my former law partner Senator Dick Stone of Florida stated that, in gateway cities like Miami, deposits from Latin Americans amounted to as much as one-third of all bank deposits. Senator Brock of Tennessee stated that no U.S. financial institution could survive the loss of one-third of its deposits in a short period of months. Following this debate, the Senate voted to extend the exemption for three years.

The lobbyists for banks, savings and loan associations, and insurance companies then went to work. The conference report followed the House bill and the 1976 Tax Reform Act made the temporary exemption permanent.[12] No one in Congress seems to have even looked at the provision since 1976.

Since 1984, *portfolio interest* paid to a foreign person is also paid free of U.S. income tax.

Reporting Nonreportable Interest

There is an interesting anomaly concerning the relatively recent requirement that a U.S. bank must report to the IRS the amount of interest paid to Canadian residents. The instructions to IRS Form 1042-S require a bank receiving new or renewed forms from customers to identify Canadian account holders and to report the bank deposit interest paid to them. It then says:

> Although you only have to report payments you make to residents of Canada, you can comply by reporting bank deposit interest paid to all foreign persons if that is easier.

Some foreign clients to whom I have shown that sentence were horrified by the thought their U.S. bank might choose the easy way out. The United States has over 8,500 separate banks with over 60,000 branches, any of which might be reporting to the IRS nonreportable bank deposit interest paid to foreign persons who are not Canadian residents simply because *that is easier.*

Other Tax-Haven Attributes

The United States has some other significant tax-haven attributes that have been conveniently ignored by the June 2000 OECD report:

- Since 1984, *portfolio interest* paid to a foreign person is also paid free of U.S. income tax.[13] Interest paid to foreign persons on government bonds, notes, and treasury bills, and on many corporate bonds, is free of income tax but may be subject to some reporting requirements. All such interest is fully taxable when paid to a U.S. citizen or resident;
- Long-term capital gains derived by a U.S. citizen or resident are taxed at a reduced rate, generally 20 percent. Short-term capital gains, such as those derived from day trading, are fully taxed at a federal income tax rate of up to 39.6 percent. Guess what? All capital gains, other than those derived from the sale of U.S. real estate or a real property holding company, are tax free when paid to a foreign person. I was recently consulted about a case in which a foreign indi-

[10] *See* H.R. 10612, Section 1041, 94th Cong., 1st Sess. (1975).

[11] *See* 122 *Congressional Record*, S 12502 S 12508 (July 26, 1976).

[12] Public Law 94-455 (1976).

[13] IRC sections 871(h), 881(c).

vidual earned over US $120 million in day trading profits during 1999 that have been treated as tax-free capital gains;

- The United States imposes an estate and gift tax of up to 55 percent on all transfers of property at death or by lifetime gift made by a U.S. citizen or domiciliary. Although this tax, theoretically, also applies to transfers of U.S. property by a nondomiciled alien, such transfers have always been exempt if the alien individual holds the U.S. property in a foreign holding company; and
- Although the United States wants every country to give it tax information, U.S. law does not permit the IRS to give any tax information to a foreign country, unless that country has either a tax treaty or a tax information exchange agreement (TIEA) with the United States.[14]

International Shipping

The June 2000 OECD report suggests that Canada, Germany, Greece, Italy, the Netherlands, Norway, and Portugal all have preferential tax regimes involving international shipping. The United States should certainly be on that list. Large numbers of cruise ships sail regularly from Florida and Gulf Coast ports to Mexico, Central America, and the Caribbean. If the cruise ship companies used U.S.-registered ships owned by U.S. companies, they would be subject to full U.S. income tax. Guess how many of these cruise ship companies use U.S. ships? None. By using foreign-flag vessels owned by foreign companies, the cruise ship companies reduce their tax burden to zero. The Internal Revenue Code exempts all income derived by a foreign company from international shipping operations if the company's country of residence grants an equivalent exemption to U.S. persons.[15] Over 90 countries offer such an equivalent exemption, either under a tax treaty, a separate transportation agreement, or a determination by the IRS.[16] It is almost difficult to find a country that does not qualify. Some of those that do qualify include the Bahamas, the Cayman Islands, Hong Kong, the Isle of Man, Liberia, Malta, the Netherlands Antilles, Panama, and St. Vincent and the Grenadines.

The Internal Revenue Code exempts all income derived by a foreign company from international shipping operations if the company's country of residence grants an equivalent exemption to U.S. persons.

Limited Liability Companies

Until a few years ago, it was common practice for nonresidents of the United Kingdom to form a company in the United Kingdom, manage it from a place outside the United Kingdom, such as Monaco, and carry on business only outside the United Kingdom. This offered great cosmetics. Many people mistakenly assumed that the company with its London registered office was subject to U.K. taxes, but it was not. It paid the same taxes as if it had been set up and run from the Cayman Islands. The United Kingdom phased out these companies from 1988 to 1993. Ireland, which had offered the same benefits, took over this business for a while and then it too eliminated most of them. These nonresident companies are still being incorporated in other British Commonwealth countries such as Singapore, which is not on the OECD tax haven list.

The most popular successor to the nonresident U.K. company seems to be the U.S. limited liability company (LLC), which offers essentially the same cosmetics. Assume, for example, that an individual who is neither a citizen nor resident of the United States forms a single-person LLC in Delaware. He uses it to carry on business entirely outside the United States. Unlike a U.S. corporation, the single-person LLC need not file tax returns, and it is not subject to U.S. tax if it is not engaged in business in the United States and it has no U.S. income. It is a "tax nothing" for U.S. tax purposes. Its registered office is in Wilmington, Delaware, and it offers essentially the same cosmetics as the former nonresident U.K. company. Delaware and Nevada LLCs are considered by many to be cheaper and better than most other offshore companies.

Harmful U.S. Tax Preferences

The 1998 OECD report on harmful tax competition set forth four key factors for identifying and assessing harmful preferential tax regimes. Applying these factors to some of the U.S. regimes for taxing nonresidents, the United States is clearly identifiable as a harmful preferential tax regime:

[14] *See* IRC section 6103.

[15] IRC section 883(a).

[16] *See* Rhoades and Langer, *U.S. International Taxation and Tax Treaties*, Chapters 47 and 73.

- *The United States imposes no tax on the relevant income.* The OECD considers a potential tax haven regime harmful if it imposes no or low effective tax rates on the relevant income. The U.S. taxes its residents, citizens, and domestic corporations but exempts all nonresident aliens and foreign corporations on interest paid by banks, savings and loan associations, and insurance companies. It does the same with respect to portfolio interest and most capital gains;
- *The U.S. regime is "ring fenced."* The U.S. tax-free deposits, portfolio interest, and capital gains are *ring fenced.* Residents, citizens, and domestic corporations are excluded from taking advantage of these benefits;
- *There is a lack of transparency.* Most U.S. residents are completely unaware of the fact that foreigners enjoy these benefits. Although the U.S. government does not *advertise* the existence of these benefits to foreigners, banks and brokerage houses see to it that any foreigner who needs to know does know all about them; and
- *There is a lack of effective exchange of information.* With one exception, the United States does not provide information concerning those who benefit from these regimes to its tax treaty partners.[17] The IRS does not even collect information about most of the income and gains arising from these regimes. It will try to get information in response to a specific request by a tax treaty partner but only if that country can tell the IRS where to look for the information. It cannot do even that for a country that does not have a tax treaty or TIEA with the United States.

Resident or Foreigner

Recent events in Ireland offer an interesting insight into foreign-held bank deposits in that country. Ireland imposes a withholding tax called *DIRT* (deposit interest retention tax) on all domestic holders of bank deposits. Foreign holders of Irish bank deposits file documents that exempt them from paying DIRT. In July 1999, Ireland's Comptroller and Auditor General John Purcell released a 500-page report as part of a government investigation into the alleged widespread use of false nonresident bank accounts to avoid the DIRT regime. The Irish Revenue has estimated that at least 10 percent of the bank deposits claimed to be foreign owned were bogus. Allied Irish Banks recently paid I£ 90 million for tax, interest, and penalties to the Irish Revenue to discharge its DIRT liabilities and several other banks have also made substantial settlements.[18] The Irish Revenue authorities will now go after many of the clients who made the bogus exemption claims.

Although the U.S. government does not *advertise* the existence of these benefits to foreigners, banks and brokerage houses see to it that any foreigner who needs to know does know all about them.

In September 1999, Japan abolished its 15 percent withholding tax on coupon interest paid on Japanese government bonds held by nonresident investors. An article in the *Daily Tax Report*[19] quoted an official of the Japanese Ministry of Finance as saying that "Japanese investors masquerading as 'foreign investors' have been taking advantage of a legal loophole and getting away without paying the 15-percent withholding." The ministry hopes to block this loophole by the end of 2000.

Many tax-free U.S. bank deposits allegedly owned by foreign persons may be similarly questionable. It would be easy for Uncle Juan to open a bank account during a visit to the United States. The bank will treat him as the depositor but he will give signing authority on the account to his nephew, Jimmy, a U.S. resident. Most future additions to the account and withdrawals will be made by Jimmy, who is the true beneficial owner of the account. No one in the bank will pay any attention to the fact that Jimmy makes these deposits and withdrawals. To avoid possible problems that might arise from the untimely death of Uncle Juan, the account will be registered in Uncle Juan's name but be payable on death to Jimmy. Since the account appears to be that of Uncle Juan, the bank will not only pay tax-free interest but the account itself will also be exempt from estate tax if Uncle Juan dies. I have often wondered how many billions of dollars of U.S. bank deposits have been structured this way.

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[17] As noted above, the IRS does provide Canada with information as to U.S. bank deposit interest paid to Canadian residents. Do all Canadian residents opening U.S. bank accounts provide their U.S. banks with Canadian addresses?

[18] *See* Brown, John Murray, "AIB Settles Tax Evasion Case," *Financial Times*, Oct. 4, 2000.

[19] *See* "Japan Considers Broader Tax Exemption for Nonresident Government Bond Investors," *Daily Tax Report*, Nov. 17, 2000, p. G-1.

Other Tax-Free Regimes

The United States is not the only OECD member state to offer tax-free bank deposits to foreign individuals and companies. Most OECD countries do so directly. Switzerland does so indirectly by permitting Swiss banks to take fiduciary deposits that are placed in foreign branches of Swiss banks in countries such as Luxembourg. The use of these fiduciary accounts openly avoids the 35-percent Swiss withholding tax. Canada offers tax-free bank deposits to foreigners in currencies other than the Canadian dollar.

After intense pressure, the Austrian Parliament recently took steps to phase out Austria's anonymous passbook savings accounts by June 2002. Such accounts have existed since the days of the Austro-Hungarian Empire. Austria has 24 million anonymous accounts — about three for each man, woman, and child in the country — leading some observers to conclude that many of these accounts are held by foreigners. These accounts are said to be worth a total of about US $100 billion.

Austria will keep its strict bank secrecy. Even Austrian tax authorities cannot obtain information from banks without the approval of a judge. That approval will not be given unless the judge is satisfied that there is reasonable suspicion of a criminal act.

Holding Companies

The June 2000 OECD report conceded that holding company regimes and similar preferential tax regimes in 13 of the 29 OECD member states may constitute harmful tax competition. But the OECD has not yet decided what to do about such regimes. It is currently examining such regimes in Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Luxembourg, the Netherlands, Portugal, Spain, and Switzerland. Several other OECD countries should probably also be on that list, including Hungary and the United States (for its LLCs).

Britain: A Superb Tax Haven

The United Kingdom has never taxed the foreign income of U.K. residents who are not domiciled in the United Kingdom, unless that income was remitted to the U.K. resident.[20] From 1803 until 1914, U.K. residents were taxable on overseas income only if the income was remitted to the United Kingdom. Since 1914, overseas income has been generally taxable, except for non-U.K. domiciliaries who remain taxable only on a remittance basis. Thus, an individual who is resident — but not domiciled — in the United Kingdom pays no U.K. tax on his income that arises abroad, unless he remits it to the United Kingdom. He is not taxed on any remittances of *capital*.

The United States and most OECD countries offer tax-free bank deposits to foreign individuals and companies.

The U.K. Inland Revenue published a *green paper* in 1988 that proposed significant changes in the way Britain taxes foreign individuals who regularly spend substantial time in the country. If these changes had been adopted, individuals regularly spending an average of over four months per year in Britain would be taxed on their worldwide income, much as they are in the United States. The British government, then run by the Conservative Party, abandoned the proposed changes in 1989, bowing to pressure from Greek shipping interests and others who threatened to close down their U.K. businesses.

The Labour Party was elected in May 1997, and Gordon Brown became Chancellor of the Exchequer. Many expected him to change the rules in view of a document he had issued in 1994, while his party was in opposition. The document is entitled *Tackling Abuses — Tackling Unemployment*,[21] and it stated, in part, that:

> Taxation of nonresidents, non-domiciles, and those with offshore accounts should be overhauled in line with the recommendations of the Inland Revenue. It is not fair that a wealthy few be allowed to work or live in the United Kingdom without making a fair contribution through taxation. . . . In Britain it is easy for a few, even if they live or work here, to avoid substantial amounts of tax through claiming to be nonresident or non-domiciled; and

[20]For an interesting discussion of the U.K. domicile rules and their impact on U.K. taxation, see Goudeve-Docker, Nigel, "The Arcane World of Domicile and Tax," *Offshore Investment*, Oct. 2000, pp. 17-22.

[21]This quotation was published in *Booth: Residence, Domicile and UK Taxation* by Denzil Davies (Butterworths, Special Tax Planning Edition, 1997), at section 1.05. This book is now out of print. It is interesting to note that the section containing this quotation was omitted by the author from the subsequent Fourth Edition of the book, published in 1999.

> Those who are non-domiciled are able to live in the United Kingdom free of tax. . . . In 1988, the Inland Revenue recommended a radical new approach to residents and domiciles.

The Labour Party has now been in power for over three years and there has been no attempt to change these rules. The headline in a recent two-page spread in London's *Sunday Times*[22] read: "Foreign-born millionaires save £10bn from Brown's tax U-turn." Here are a few of the points raised by the article:

- Hundreds of foreign-born multi-millionaires living in the United Kingdom enjoy what the article calls the "non-dom" loophole. Prior to the 1997 general election, Brown and his shadow Treasury team were scathing about the failure of the Tories to close the loophole. Since winning the election and becoming Chancellor, Brown has chosen to retain it;
- "The loophole is perfectly legal. But critics of the scheme say it is scandalous that huge amounts of personal wealth are beyond the taxman's reach;"
- One *non-dom*, Lord Paul of Marylebone, is a Labour Peer who ranks among the 100 richest people in Britain. His company gave several hundred thousand pounds to the Labour Party. He is described as one of Labour's biggest benefactors;
- The following statement was attributed to an unnamed senior Inland Revenue official: "This is an anachronism, a hangover from the dark ages. It's a loophole for the wealthy few that isn't available to most of us. It has turned the U.K. into a tax haven and is hardly appropriate for a government committed to modernization;"
- Although Inland Revenue and the Treasury have repeatedly refused to estimate how many people in Britain claim *non-dom* status, there must be hundreds of thousands of them. Estimates range from 250,000 to more than one million. The French embassy in London has estimated that there are at least 180,000 French nationals living in Britain, most of whom are described as "ultra-high-net-worth" individuals. They include the French super-model, Laetitia Casta, who, after being selected as "the face of France," has moved to London; and
- The article quoted Pierre Gerbier, a private banker at the Royal Bank of Canada, as saying: "The non-dom rules make Britain a tax haven under the cover of the European Union. You have all the advantages of living in a developed and stable EU country but with very low taxes."

Other Tax-Haven Attributes

Here is a brief list of some other tax haven attributes of OECD member states:

- *Belgium* does not tax most capital gains. People from the Netherlands and other high-tax countries regularly move to Belgium and remain in the country long enough to sell their securities tax free;
- *Canada* permits its new *landed immigrants* to escape tax on their foreign income for the first five years they are resident in Canada by setting up a pre-immigration offshore trust;
- Since 1986, *France* has provided tax breaks to investors in French overseas departments and territories. Until now, some investors were permitted to deduct their entire investment and to get some kind of double deduction for any losses. Beginning in 2001, these benefits will be partially curtailed;
- In February 2000, the *Wall Street Journal* reported that some towns in *Hungary* are attracting increasing numbers of offshore companies by offering them tax rates as low as 3 percent.[23] No one in either the European Union or the OECD seems to have paid any attention to these towns. Hungary apparently also still has no tax on interest income.
- *Iceland*'s new international trading companies are on the OECD list of preferential tax regimes. These companies pay taxes at only 5 percent, compared to the normal 30 percent imposed in Iceland. It is interesting that the law creating these entities was not even enacted until 1999, a year after the 1998 OECD report on Harmful Tax Competition was published;
- *Ireland*, like the United Kingdom, has numerous nondomiciled residents who are not taxed on any foreign-source income unless it is remitted to Ireland;
- *Italy* still tolerates the village of *Campione d'Italia* on Lake Lugano, whose residents fall between the cracks and pay no tax to either Italy or Switzerland;[24]
- *Luxembourg* still has several types of tax-free holding companies. It has also been a magnet for bank deposits by other Europeans. Luxembourg refused to sign the 1998 OECD

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[22] *Sunday Times* (London), June 18, 2000, pp. 12-13.

[23] See Reed, John, "Corporate Giants Find Relief From Big Taxes in Tiny Towns," *Wall Street Journal Interactive Edition*, Feb. 9, 2000.

[24] See Langer, Marshall J., *The Tax Exile Report*, Chapter 41 (Scope International, 6th Edition, 1997). This book is now out of print.

report on Harmful Tax Competition, but it accepted the fact that it was included in the June 2000 OECD report;

- In September 2000, *The Washington Post* reported that the town of San Francisco Magu in *Mexico* has been exempt from all taxes, including income taxes, for the last 260 years;[25]
- In June 2000, the European Commission granted a request by *Portugal* to approve a new scheme that encourages business investment in *Madeira* by providing tax-free allowances;
- *Spain* and the European Commission have both approved the Canary Islands Special Zone tax regime under which a qualified company can pay a tax rate of between 1 and 5 percent; and
- *Switzerland*, like Luxembourg, refused to sign the 1998 OECD report on Harmful Tax Competition, but it accepted the fact that it was included in the June 2000 OECD report. In June 2000, the Swiss Federal Council confirmed that maintaining Swiss bank secrecy is a non-negotiable condition for cooperation with the European Union and the OECD. The Swiss economics minister was quoted as saying that the OECD project was "imbalanced and unilateral." Switzerland also openly offers lump-sum (forfait) tax agreements to new residents. The amount of tax to be paid is negotiated by the prospective new resident's advisors with the cantonal tax authorities. Austria and some other OECD countries offer similar arrangements, but do so less openly. There is no mention of these arrangements in any of the OECD reports.

The Arbitrary Blacklist

The OECD has been somewhat arbitrary in its designation of harmful tax havens. In addition to omitting many harmful practices by its own member countries, it has omitted other countries that regularly appear on blacklists named by OECD and non-OECD countries. It would be interesting to find out why the OECD did not include countries such as Costa Rica, Cyprus, Guam, Hong Kong, Malaysia (Labuan), Malta, Singapore, and Uruguay, all of which can be used, and are used, as tax havens.

Conclusion

It is obvious that the United States, Britain, and many of the other OECD member states are significant tax havens. The OECD countries should not attack other jurisdictions unless and until they first clean up their own act, something I suspect many of them will never really do. If there is to be a dialogue concerning the elimination of harmful tax haven attributes, it should be carried on by an organization such as the United Nations, the IMF, or the WTO, in which all countries are represented, not by the OECD tax cartel. ✦

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[25]Jordan, Mary, "In Mexican Town, Only Certainty Is Death," *Washington Post*, Sept. 25, 2000, p. A14.

FATF • GAFI

Financial Action Task Force on Money Laundering
Groupe d'action financière sur le blanchiment de capitaux

OECD OCDE

Organisation for Economic Co-operation and Development
Organisation de Coopération et de Développement Economiques

Paris, 27 September 2000

FATF to Expand its Anti-Money Laundering Campaign and Review of Non-Cooperative Countries and Territories

The Financial Action Task Force on Money Laundering (FATF) will meet in Madrid on 4-6 October, to discuss its strategy for further expanding the worldwide anti-money laundering network. These discussions will include the developments presently taking place in its review of the non-cooperative countries and territories.

Journalists are invited to attend a news conference on Thursday, 5 October 2000 at 1.30 p.m. at the Palacio de Congresos y Exposiciones, Madrid, Spain. Mr. José María Roldán, FATF President, and Mr. Patrick Moulette, FATF Executive Secretary will outline the work of the FATF for the coming year and provide information on the FATF review of non-cooperative countries and territories

The FATF is an independent international body whose Secretariat is housed at the OECD. The twenty nine member countries and governments of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; Singapore; Spain; Sweden; Switzerland; Turkey; United Kingdom; and the United States. Two international organisations are also members of the FATF: the European Commission and the Gulf Co-operation Council.

If you wish to attend the press conference, please register with the OECD Media Relations Division, Helen Fisher (tel. 33 1 45 24 80 97 or helen.fisher@oecd.org) or Antonio Prada Ramón, Spanish Ministry of Finance (tel. 34 91 595 8074 or antonio.prada@gabvice.meh.es).

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FATF • GAFI

Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

Report on Money Laundering Typologies 2003-2004

EXHIBIT F-10

II: NON-PROFIT ORGANISATIONS AND LINKS TO TERRORIST FINANCING

29. The FATF examined the role of non-profit organisations (NPOs) as part of its last typologies exercise (2002-2003). At that time, it was able to make some preliminary findings on the nature of the risk to the sector. In order to expand on this work, NPOs and potential for misuse for terrorist financing purposes was selected once again and became the second workshop topic for this year's exercise. As indicated in the introduction, all three workshops had additional preparation before the experts meeting. The preparation for the NPO workshop, however, was the most extensive of the three workshops, consisting of several small meetings of experts and numerous exchanges of analyses and position papers. For this reason, the NPO workshop was able to obtain a greater degree of detail in its findings which are then reflected in this report.

30. While some countries have relatively extensive experience with terrorism financing through non-profit organisations (NPOs), other countries clearly have a more limited experience. Only some of the material provided as part of this year's exercise described cases of *proven* terrorist financing. Much of the material therefore related to *suspected* or *possible* terrorist financing — many cases involved investigations that were still ongoing — while a few of the cases dealt with other possible forms of misuse of NPOs.

31. Most countries share the concern over the difficulties in detecting terrorist financing through misuse of NPOs. It is generally acknowledged that NPOs play a crucial social and financial support role in all societies, and it is obvious that this role is not being called into question. Nevertheless, the sheer volume of funds and other assets held by the charitable sector means that the diversion of even a very small percentage of these funds to support terrorism would constitute a grave problem. Therefore, the limited knowledge about the extent to which terrorists may be exploiting the NPO sector should be considered a matter of serious concern for the whole international community.

32. NPOs possess many characteristics that are particularly vulnerable to misuse for terrorist financing. They enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions, often exactly in or next to those areas that are most exposed to terrorist activity. Finally, depending on the country and legal form of the NPO, they are often subject to little or no regulation (for example, registration, record keeping, reporting and monitoring) or have few obstacles to their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees, etc.).

Typologies

33. The case examples presented during this year's typologies exercise appeared to show that NPOs can be misused in a variety of ways and for different purposes within the framework of terrorism financing. First of all, NPOs can be used by terrorists and terrorist organisations to raise funds, as was the case for many of the larger NPOs that had their assets frozen on the basis of the UN Security Council Resolution 1373 (2001). Often – but not always – these organisations have applied for and received a formal charitable or tax exempt status. Moreover, some of these organisations were reported to have used rather aggressive fund raising techniques, sometimes seeking donations from the public at large, and in other instances focusing on certain target groups, particularly within specific ethnic or religious communities.

Case 5: Raising of funds through an NPO

A registered charity, ostensibly involved in child welfare, used video tapes depicting religious "freedom fighters" in action in various countries, together with graphic images of atrocities perpetrated against members of that religion. The tapes contained an appeal to send donations to a post office box number to help in the "struggle". These tapes were apparently widely distributed around religious establishments throughout the region. The same

October 19, 2000

THREATS TO FINANCIAL FREEDOM

Statement of
HON. RON PAUL
OF TEXAS

[Page: E1868 - E1869]

- Mr. Speaker, I recently had the pleasure of hearing remarks made by our former House colleague, Bob Bauman of Maryland, at a meeting of the Eris Society in Colorado. Since his talk centered on banking, financial and related privacy issues pending before the Congress, I want to share his view with the House as an informed statement of the threats to financial freedom posed by the Clinton administration's policies.

- Mr. Bauman, the author of several books on offshore financial topics, serves as legal counsel to The Sovereign Society (http://www.sovereignsaociety.com), an international group of citizens concerned with the government encroachment on financial freedom.

- Remarks of Robert E. Bauman, Eris Conference, Durango, Colorado, August 12, 2000.

I take as my theme two quotations, one from the Gospel of St. Matthew, 20:15--`Do not I have the right to do what I want with my own money?'

The second is from Mayer Amschel Rothchild (1743-1812), founder of the famous banking dynasty, the House of Rothchild, who said: `Give me control over a nation's currency and I care not who makes its laws.' Both quotes have relevance to what I have to say.

If you are fortunate enough to fall into the estimated group of six million millionaires worldwide now in existence, a number noted in a study by Merrill Lynch last year, you automatically may be a criminal suspect.

I say `suspect' because Citibank views these wealthy people, who control approximately 21 trillion-six hundred billion dollars, as potential financial criminals simply because of their wealth. Citibank announced last year that their 40,000 private banking clients, each of whom had to prove a personal net worth of $3 million in order to qualify for the bank's services, are watched every minute of every day to see if they may be engaged in money laundering or other financial crimes. I am certain other banks do as well.

The constant surveillance is accomplished, as is most privacy invasion these days, by a special banking computer software program called `America's Software' which allows every transaction in any account to be watched constantly. It produces a daily record for bank officials, who now have certain obligations imposed by US law that require the reporting of `suspicious activities' to federal agents. Transfers of large amounts of cash or other unusual account activity rings alarm bells and results in an investigation not revealed to the `suspect' banking client under penalty of law.

We can conclude from this Draconian arrangement, for one thing, that a person of great wealth who establishes a private banking relationship with a major bank now is presumed to be a

I was at a conference on April 22, 1999 in Miami sponsored by the respected publication, Money Laundering Alert. Lester Joseph, Assistant Chief of Asset Forfeiture and Money Laundering for the Criminal Division of the U.S.

Department of Justice, said that the U.S. Government officially views any offshore financial activity by US persons--any offshore financial activity--especially the use of tax havens, as potential criminal money laundering activity.

Now, it's quite obvious that financial activities in which a person engages when wealth is moved offshore for asset protection, for broader investment potential, for any number of legitimate reasons, for possible tax savings, any of these moves, are innocent in themselves. Former Secretary of the US Treasury, Robert Rubin, admitted in congressional testimony last year, it is the intention behind these innocent financial moves that government agents want to police for possible criminal investigation and prosecution.

So now we have the government money police targeting normal financial activities that until recently have been perfectly legal, simply because a person decides in his own best interests, to go offshore. We all know that in the US, African-American, Latino, Asian-American and other racial minorities have been unfairly subject to police 'profiling.' Add to that list of 'presumed guilty,' Americans who engaged in offshore financial activity.

I'm not a defender of wealth per se. I wish I had wealth to defend, but I am a defender of freedom. There can be no freedom, personal or otherwise, without wealth, without the right to own and use one's own property as one see fit. Remove property rights and you have no means to sustain life for yourself or your family. But now the acquisition and accumulation of productive wealth has become officially suspect in America.

For the last 20 years the policies adopted by the United States and allied governments have constituted a stealth war against wealth and against financial privacy. While the free flow of capital is extolled as appropriate and essential, the governments of major nations have turned upside down the traditional role of banks and banking. As a child I was made to believe that the people you dealt with at your bank and other financial institutions were fiduciaries to whom you could entrust your money.

Now we have what I call the 'Nazification' of the financial system, not only in America but worldwide. I don't use that term lightly. As a matter of historic fact, the civil forfeiture laws in this country mirror in many major respects the Nazi forfeiture laws that were used to confiscate the property of the Jews. I am a member of the board of directors of Forfeiture Endangers American

The genesis of this 'wealth=crime' policy can be found in that infamous political and moral failure, the so-called 'war on drugs.' One of the primary weapons of this ill-begotten war has been civil forfeiture, where police seize cash and property based on rumor or hearsay. In 80% of the cases, the owner is never charged with any crime, but usually the police keep the loot. Many police have long since turned their attention away from drugs, and instead pursue the cash and property they use to lard their budgets. Thankfully, my former colleague, Henry Hyde of Illinois, led the successful legislative battle for some much needed civil forfeiture reform which recently became law.

As part of the drug war that progressed and expanded (but is never victorious), the catch all crime of 'money laundering' was invented: an all purpose federal prosecutors' dream. The anti-money laundering statutes that have grown like a malignancy. Charges of money laundering now routinely are shown in with almost every possible criminal indictment, often as a bargaining chip and/or a means to confiscate the wealth of the accused even before trial. Try hiring a good defense attorney when your bank account has been frozen.

Laws enacted under the banner of the war on drugs intentionally have forced bankers to become spies for the federal financial police. The bankers' primary allegiance now is not to customers or clients, but to the government.

At the Miami conference, scores of bank officials were instructed how to question clients, watch account activity, and report any 'suspicious activity'. Suspicious activity reports (SARs) are filed by the tens of thousands every month, produce voluminous computer records, encourage potential criminal investigations, allow prosecutors to bully citizens, but in the end very few SARs put criminals in jail. What this success process has produced is the mushrooming of

federal prosecutorial staffs, US attorneys budgets, the power and costs of the US Department of Justice and the welfare of the bureaucrats and lawyers who feast at the taxpayers' trough.

That great economist, Wilhelm Roepke, once wrote: 'It is very easy to awaken resentment against people who not only have money, but also the boldness to send that money abroad in order to protect it against all manner of domestic insecurity. It's vital that people in their means of existence, that is, capital, still have the chance to move about internationally, and when absolutely necessary, to escape the arbitrariness of government policy by means of secret back doors.'

Consider that expressed view in the context of what is known as 'expatriation,' the human right to acquire a new nationality and renounce one's old citizenship. We, as a nation of immigrants, should cherish that right.

In November 1994 Forbes magazine published an infamous article which identified a handful

In truth, there are very legitimate financial reasons for an American citizen to 'go offshore'. These include avoiding exposure to costly domestic litigation and excessive court damage judgements and jury awards, protection of assets, unreasonable SEC restrictions on foreign investments, the availability of more attractive and private offshore bank accounts, life insurance policies and annuities, avoidance of probate and reduction of estate taxes.

But Americans who have followed this prudent course now find themselves lumped together with drug lords, tax cheats, dirty money launderers, disease carriers and assorted criminals. What is legal and legitimate is made to look sinister and evil.

There is a decided international dimension to this domestic U.S. campaign against wealth. Beginning last June, the news media took belated notice of offshore tax havens and their thriving financial centers as a newly discovered international threat. A frenzy of publicity surrounded the serial publication of spurious 'blacklists' by previously unnoticed international organizations. None of these self-appointed, self-important groups enjoy any legal standing, but they proceeded to announce exactly how the international financial world should conduct its affairs. Those nations in disagreement with the OECD world view were threatened with financial boycotts and unexplained 'sanctions' to be imposed by June 2001.

These organizations include the Paris-based organization for Economic Cooperation and Development (OECD), which loudly denounces what it calls 'harmful tax competition' is composed of representatives from major high tax nations. An OECD subsidiary is the Financial Action Task Force (FATF), a sort of financial Gestapo that pronounces who is legal and who is not legal in terms of money laundering activity.

Yet a third group without no basis in international law calls itself the 'Financial Stability Forum.' This is a subgroup of the G-7 nations and has taken it upon itself to decide which nations are good or bad in cooperation for capital flows.

All of these organizations are self-anointed and don't have any more standing than the International Tennis Association as far as legal capacity to impose their decisions. They are little more than public relations mouthpieces of an international cartel of rich nations trying to suppress tax havens and other nations that have profited from fully legal tax competition.

In an obviously co-ordinated effort starting last May, these organizations each issued its own 'blacklist' of nations it found deficient in various ways. The FSF attached those it claimed were disruptive to international financial activity. FATF issued a list of countries allegedly lax on money laundering. The OECD came out with list of nations engaged in 'unfair tax competition'. It was no coincidence that most of the world's no-tax financial haven nations were on all these phony lists. A small coterie of statist bureaucrats in the financial ministries of the major nations had coordinated their propaganda work well: an uneducated, gullible global news media swallowed this phony story whole.

Every one of the wealthy nations that are pushing this attack on tax havens are controlled by high-tax, socialist governments who see a tax and wealth hemorrhage occurring among their citizens. Yes, millions, billions of dollars, pounds and francs are pouring out of high tax nations flowing to offshore tax havens--and for very good reasons. Why would anyone in his right mind continue to pay confiscatory taxes when you can move your financial activity to another nation where you pay no personal or corporate income tax, no estate tax, no capital gains tax?

Ignored in this concerted attack on small tax haven nations is the simple fact that under current U.S. and UK tax laws the biggest tax savings for foreigners can be found in Britain and in the United States. The United States is one of the biggest tax havens in the world--but only for non-U.S. persons. And in spite of the known fact that most of the dirty money laundering in the world takes place in London and New York, neither nation is on the FATF money laundering *blacklist*.

All this is really a smoke screen for increased tax collection. Feeling the tax drain, the rich nations want an end to all those factors that make tax haven attractive: They demand that taxes be imposed where there are none, want an end to financial and banking privacy and 'free exchange' of information, want complete 'transparency', and want these small nations to become tax collectors for the rich, welfare state nations. In other words, they want tax havens to become just like the profligate major nations.

This new cartel of high-tax nations, limping along with their huge, unsustainable welfare state budgets, are engaged in a grotesque rebirth of colonialism and imperialism of a financial nature. They are willing to trample the sovereignty of small nations. In fact, the United Nations last year said national sovereignty must be compromised in order to impose a world financial order of high taxes and no financial privacy. Such a radical demand mocks international law. It makes vassal states out of sovereign nations.

This wrong headed approach flies in the face of every development that is producing the new prosperity: the Internet, e-commerce, globalization, cross border investment worldwide. For that reason alone, this effort will fail. Just as the legendary King Canute could not hold back the ocean tides, the rich nations will be swept away in their effort to impose their will on the world.

Bahamas Blacklisting Down To Drug Trafficking And Offshore Funds, Say Politicians
Lisa Ugur, Tax-news.com, London
28 November 2000

The furore over the OECD and Financial Action Task Force (FATF) blacklists, published six months ago, continues unabated, especially in the Caribbean nations. The Bahamas' was hit particularly hard by the OECD's initiative on supposed "harmful" tax regimes and the FATF's hitlist of jurisdictions deemed un-cooperative in the international fight against money laundering. Last week two top-level Bahamian politicians proffered their own explanations as to why the Bahamas' incurred the wrath of the G-7 powers.

Bahamian opposition MP Bradley Roberts last week called on the government to resign over the OECD and FATF debacle, claiming that the blacklisting of the Caribbean nation was directly related to drug issues, or more precisely the government's inability to deal with drug trafficking. In a House of Assembly debate on the Central Bank of the Bahamas Act 2000, he said Deputy Prime Minister Frank Watson had "admitted the failure" of the Tracing and Forfeiture Act because the Act had only been used in a few instances. Mr Roberts charged: 'Why hasn't there been more cases brought under this Act? You have had one or two failures, so you give up, you throw your hands up, you do not proceed to make any amendments to close any loopholes, you just simply allow it to flourish.'

Mr Roberts said that asking the government to resign was a fair request. He stated: 'Either it resigns or risks being jailed by the very laws being enacted under the cloud of blacklisting.' He was particularly critical of the government for its handling of the growing trade in illegal drugs and quoted from a recent speech by Assistant Commissioner Reginald Ferguson on money laundering. The Assistant Commissioner had said that money laundering and the proceeds from drug trafficking had distorted the Bahamian economy with the result that the economy now appears healthier than it is.

However, the Minister of Economic Affairs, Carl Bethel, said last week that the Bahamas' blacklisting was due to the loss of control of funds placed offshore. More than one trillion dollars pass through offshore financial centres, and Mr Bethel claims that the major world economies, ie the G-7 nations, have reacted to the loss of substantial investment dollars by clamping down on offshore jurisdictions such as the Bahamas. Mr Bethel feels that the OECD initiative has more to do with the loss of control over those funds than with the tax question.

Mr Bethel, who accompanied Bahamian Prime Minister Hubert Ingraham on his recent trip around Europe to discuss the blacklisting issue, refutes the claims of Bradley Roberts. In the House of Assembly last week, he said that many other countries, including Israel, were on the blacklists, and there was no suggestion that they were included because of drug trafficking.

With regards the issue of control of offshore funds, Mr Bethel said: 'When an investor buys stock and bonds, what does he do? He pays money to the government and he receives what they call "government paper."' 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 dollars they cannot borrow from their financial markets... that cannot be used to fund the development of their country. It is in some offshore centre being managed by someone who may not feel patriotic about it... and so that is a loss of the savings of these countries to the offshore markets.'
Referring to a recent report on the growth of offshore funds, Mr Bethel stated: 'Just one fund was seeded with capital in excess of US$32bn. And that is big, big money.'

» More From The Grand Rapids Press

Top Stories

Seven indicted in $20 million scam

Tuesday, August 10, 2004

By Ed White

The Grand Rapids Press

Several people helped a Grand Rapids-area woman run a $20 million swindle, stuffing their pockets with huge commissions and even opening bars and buying airplanes instead of putting the cash into safe investments, according to an indictment.

The federal indictment unsealed Monday expands the case beyond Janet Marcusse, the leader of Access Financial Group. The promises were false because Access Financial "had no history of earning large profits" and did not keep investments in a "safe, guaranteed account," the indictment said.

Promoted as "profits," 40 percent of the $20 million was simply recycled to investors in a typical Ponzi scam, authorities said.

The balance was spent by Marcusse and her allies or stashed away in accounts around the world, investigators allege.

Marcusse, 47, has been in custody since her capture in a trailer deep in Missouri woods last month. The indictment now will trump the criminal complaint that has kept her behind bars.

She is charged with fraud and conspiracy to commit fraud, along with boyfriend William Flynn, David Albrecht, George Besser, Diane Boss, Wesley Boss, Donald Buffin Jr. and Jeffery Visser.

Wesley Boss, Albrecht, Buffin and Visser were key players at Access Financial, together getting more than $1 million, according to the indictment.

Flynn purchased a home and 70 acres in Wisconsin, partly with investors' money, the government said.

He also used $180,000 to open two bars, Billy's Night Club and Cheeks, in Marinette County, Wis., and an unspecified amount to buy three airplanes, according to the indictment.

The defendants are accused of covering up their crimes by regularly sending newsletters to investors with "false representations and promises" about the money.

Buffin was arrested Monday and released after hearing the charges against him. The others will make their initial appearances at a later date.

During recent court hearings, Marcusse disputed the fraud charges against her, claiming she actually put money into legitimate investments and lost millions due to embezzlement by employees. She is acting as her own lawyer, eschewing court-appointed help.

The Grand Rapids Press

Scam trial goes on after 3 plead guilty ; Case continues against five defendants accused of $20 million swindle; [All Editions]

Ed White / The Grand Rapids Press. **The Grand Rapids Press**. Grand Rapids, Mich.: May 25, 2005. pg. B.1

Full Text (317 words)

GRAND RAPIDS -- On the seventh day of trial, three of eight defendants accused in a $20.7 million swindle pleaded guilty, including a woman who signed and mailed monthly checks, assuring people their money was in safe investments.

Diane and Wes Boss of Hudsonville said they eventually learned Access Financial Group was not legitimate, but they continued to have key roles in the Grand Rapids-area operation.

The Bosses, working for alleged ringleader Jan Marcusse, said they pocketed $1.3 million from fall 1999 to spring 2001 and paid no income tax.

The couple pleaded guilty to money laundering and conspiracy. Another defendant, David Albrecht, also pleaded guilty Tuesday.

Access Financial attracted nearly 600 investors, many of them Steelcase employees or retirees, who were promised 3 percent monthly returns plus bonuses. For a fee, they were told how to create their own church ministry and treat the payments as tax-free.

The government, however, said it was a Ponzi scheme, with $8.6 million transferred among investors and the balance spent on houses, cars, airplanes, travel, even taverns.

"They falsely represented to victims that they were making huge profits," Assistant U.S. Attorney Tom Gezon said.

Wes Boss, 51, a former math teacher, said the "interest" checks were intended to fool people that "this was a legitimate investment scheme."

Diane Boss, 47, signed the checks and edited the Access Financial newsletter written by Marcusse, her former sister-in-law. The Bosses lived in a $275,000 house in Hudsonville, enhanced with landscaping worth $200,000.

Marcusse "wanted everything to look well. I did, too," Diane Boss told U.S. Chief District Judge Robert Holmes Bell.

The jury has heard much evidence from investors who described how they placed money with Access Financial.

"We should have recognized how fraudulent the programs were," the Bosses said in a letter to investors in August 2002. "Unfortunately we turned a blind eye ... and ultimately a lot of people were hurt."

decision about a particular matter or transaction.

The term "false or fraudulent pretenses, representations, or promises" includes actual, direct false statements as well as as half-truths. It includes the knowing concealment of facts that are material or important to the matter in question and that they were made or used with the intent to defraud.

Now, a "scheme or artifice to defraud" includes a scheme to deprive another person of tangible as well as intangible property rights. Intangible property rights means anything valued or considered to be a source of wealth including, for example, the right to honest services and the right to decide how one's money is spent.

It is not necessary for the government to prove that a defendant was actually successful in defrauding anyone or successful in obtaining money or property by means of false or fraudulent pretenses, representations, or promises. It is not necessary for the government to prove that anyone lost any money or property as a result of the scheme or plan to defraud or scheme or plan to obtain money or property by means of false or fraudulent pretenses, representations, or promises. An unsuccessful scheme or plan to defraud or scheme or plan to obtain money by false or fraudulent pretenses, representations, or promises is as illegal or unlawful as a scheme or plan that is ultimately successful.

Analysis&Perspective

FRAUD

Is a Scheme to Deprive Another of the 'Right to Control Spending' Mail Fraud?

By Michael D. Sher

The mail-fraud statute[1] "does not make a federal crime of every deceit."[2] Rather, that statute is "limited in scope to the protection of property rights,"[3] and "*makes criminal only schemes to deprive people of property rights.*"[4] Therefore, a deception that neither contemplates nor leads to the deprivation of another's property does not violate Section 1341.

> *McNally* requires that the government allege and prove as an element of the offense of mail fraud that the defendant deprive the victim of a property right. This principle holds true when the government is the victim of the alleged scheme to defraud because "any benefit which the Government derives from the [mail-fraud] statute must be limited to the Government's interests as property holder."[5]

"The object of the fraud [must] be 'property' in the victim's hands."[6]

Because a regulatory interest such as the integrity of a licensing process is not a property interest,[7] a scheme that is intended merely to deprive another of such an interest, or to frustrate such an interest, is not a scheme to defraud proscribed by Section 1341.[8] This article addresses the ill-defined boundary between property interests and regulatory interests by examining caselaw treatment of the so-called "right to control spending," that is, the right to decide how and to whom one's property is transferred or money is paid. The courts of appeals have split on whether the "right to control spending" is a property interest for purposes of Section 1341. Three circuits have recently concluded that the "right to control spending" is not "money or property," while three others have held that it is a property interest and, therefore, a scheme intended to deprive another of such an interest supports a Section 1341 conviction. The courts of appeals clearly are not in agreement concerning where the boundary between property and regulatory interests lies, calling for a resolution of this question by the Supreme Court.

Michael D. Sher is a partner at Neal, Gerber & Eisenberg LLP, Chicago, and a Fellow of the American College of Trial Lawyers. He represented at trial and on appeal one of the defendants in United States v. Leahy, *discussed in this article, which was reported in the district court as* United States v. Duff, *336 F. Supp. 2d 852 (N.D. Ill. 2004), and 371 F. Supp. 2d 959 (N.D. Ill. 2005).* *The author gratefully acknowledges the assistance of Emily Mulder Milman, his partner and co-counsel in* Leahy, *and Brian E. Cohen, of Northwestern University School of Law, for their assistance in the preparation of this article. The author also thanks Terence H. Campbell, of Cotsirilos, Tighe & Streicker, Chicago, counsel for one of the other* Leahy *defendants, for his contributions to the analysis of Section 1341 set forth in this article.*

Fraud: Getting Something for Nothing

Although written in the disjunctive, Section 1341 proscribes schemes intended and designed to separate the victim from his property, that is, a scheme to defraud requires an intent *to deprive* the victim of "money or property."[9] Without this intent to deprive another of property, there is no scheme to defraud. It follows that if the actor acts with an intent to deprive another of something other than property with the intention to deceive but not to deprive that party of property, there is no mail fraud. And while a scheme does not have to be successful to be unlawful, and actual pecuniary loss is not an element of a Section 1341 violation,[10] the scheme must at least present the potential for loss of the victim's money or property to violate Section 1341.

Intended, Actual Deprivation of Property. The deprivation of the so-called "right to control spending," without more, does not result in the intended deprivation of money or property required for a Section 1341 conviction because that "right," in the absence of intended or possible economic harm, is not a property right at all.[11] Therefore, the mere frustration of that "right" does not result in a loss of property, nor should it support a conviction under Section 1341.[12] The reach of Section 1341 should not be extended to cases where the defendant neither deprives nor intends to deprive the victim of its property, that is, to profit at the victim's expense by obtaining something for nothing.[13] That is why to sustain a Section 1341 charge, the government must show "that some actual harm or injury was contemplated by the schemer" in order to supply the necessary element of fraudulent intent.[14]

An "actual harm or injury" is one that affects the tangible, pecuniary interests of the victim, not some metaphysical harm. While the government need not allege or prove that the intended victims were actually defrauded,

EXHIBIT L-10

Chapter 10.00 FRAUD OFFENSES

Introduction to Fraud Instructions
(current through December 31, 2007)

The pattern instructions cover three fraud offenses with elements instructions:

Instruction 10.01 Mail Fraud (18 U.S.C. § 1341);

Instruction 10.02 Wire Fraud (18 U.S.C. § 1343); and

Instruction 10.03 Bank Fraud (18 U.S.C. § 1344).

In addition, Instruction 10.04 Fraud—Good Faith Defense is included to use in conjunction with the fraud instructions.

The elements of mail, wire and bank fraud are similar except for the jurisdictional elements. The Committee drafted separate instructions for the three offenses as the most efficient way to reflect the different jurisdictional bases. Beyond the jurisdictional bases, the mail, wire and bank fraud offenses are read in tandem and case law on the three is largely interchangeable. *See* Carpenter v. United States, 484 U.S. 19, 25 n.6 (1987) ("The mail and wire fraud statutes share the same language in relevant part, and accordingly we apply the same analysis to both sets of offenses here."); United States v. McAuliffe, 490 F.3d 526, 532 n.3 (6th Cir. 2007) ("The bank, mail and wire fraud statutes all employ identical 'scheme to defraud' language and thus are to be interpreted *in pari material.*") (citations omitted); United States v. Daniel, 329 F.3d 480, 486 n.1 (6th Cir. 2003); Hofstetter v. Fletcher, 905 F.2d 897, 902 (6th Cir. 1988) ("This court has held that the wire fraud statutory language should be interpreted with the same breadth as the analogous language in the mail fraud statute.") (citations omitted); Neder v. United States, 527 U.S. 1, 20-21 (1999) (bank fraud statute was modeled on and is similar to the mail and wire fraud statutes).

These instructions do not cover fraud based on a deprivation of the intangible right to honest services as provided in 18 U.S.C. § 1346.

§ 10.01 MAIL FRAUD (18 U.S.C. § 1341)

(1) The defendant is charged with the crime of mail fraud. For you to find the defendant guilty of mail fraud, you must find that the government has proved each and every one of the following elements beyond a reasonable doubt:

(A) First, that the defendant [knowingly participated in] [devised] [intended to devise] a scheme to defraud in order to obtain money or property, that is_____*[describe scheme from indictment]*;

(B) Second, that the scheme included a material misrepresentation or concealment of a material fact;

(C) Third, that the defendant had the intent to defraud; and

(D) Fourth, that the defendant [used the mail] [caused another to use the mail] in furtherance of the scheme.

(2) Now I will give you more detailed instructions on some of these terms.

(A) A "scheme to defraud" includes any plan or course of action by which someone intends to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises.

(B) The term "false or fraudulent pretenses, representations or promises" means any false statements or assertions that concern a material aspect of the matter in question, that were either known to be untrue when made or made with reckless indifference to their truth. They include actual, direct false statements as well as half-truths and the knowing concealment of material facts.

(C) An act is "knowingly" done if done voluntarily and intentionally, and not because of mistake or some other innocent reason.

(D) A misrepresentation or concealment is "material" if it has a natural tendency to influence or is capable of influencing the decision of a person of ordinary prudence and comprehension.

(E) To act with "intent to defraud" means to act with an intent to deceive or cheat for the purpose of either causing a financial loss to another or bringing about a financial gain to oneself [to another person].

(F) To "cause" the mail to be used is to do an act with knowledge that the use of the mail will follow in the ordinary course of business or where such use can reasonably be foreseen.

(3) [It is not necessary that the government prove [all of the details alleged concerning the precise nature and purpose of the scheme] [that the material transmitted by mail was itself false or fraudulent] [that the alleged scheme actually succeeded in defrauding anyone] [that the use of the mail was intended as the specific or exclusive means of accomplishing the alleged fraud] [that someone relied on the misrepresentation or false statement].]

(4) If you are convinced that the government has proved all of the elements, say so by returning a guilty verdict on this charge. If you have a reasonable doubt about any one of the elements, then you must find the defendant not guilty of this charge.

Use Note

Brackets indicate options for the court.

Throughout the instruction, the word "mail" should be replaced by the term "private or commercial interstate carrier" if the facts warrant.

Paragraph (1)(D) should be amended to include the receipt of mail if the facts warrant.

In paragraph (2)(D), the word "person" should be replaced with entity or corporation or agency as the facts warrant.

The provisions of paragraph (3) should be used only if relevant.

See also Instruction 2.09 Deliberate Ignorance.

If there is any evidence at all of good faith, the court should refer to Instruction 10.04 Fraud—Good Faith Defense.

Committee Commentary Instruction 10.01
(current through December 31, 2007)

This instruction does not cover mail fraud based on a deprivation of the intangible right to honest services as provided in 18 U.S.C. § 1346.

To define the elements of mail fraud, the Committee relied primarily on Neder v. United States, 527 U.S.1 (1999); United States v. Gold Unlimited, Inc., 177 F.3d 472 (6th Cir. 1999) and United States v. Frost, 125 F.3d 346 (6th Cir. 1997).

The specific language used in paragraph (1) of the instruction is drawn from two cases. Paragraphs (1)(A), (1)(C) and (1)(D) are based on United States v. Gold Unlimited, Inc., *supra* at 478-79. Paragraph (1)(B), which covers materiality, is based on Neder v. United States, supra.

In paragraph (1)(A), the statement that the "scheme to defraud" must be a "scheme to defraud *in order to obtain money or property*" is based on Cleveland v. United States, 531 U.S. 12 Copyright Cases or Patent Cases (2000) and McNally v. United States, 483 U.S. 350 (1987). In *McNally*, the Court noted that based on the disjunctive phrasing of the mail fraud statute, which refers to "a scheme to defraud, or for obtaining money or property," it was arguable that the two phrases should be construed independently. However, the Court then rejected this construction, explaining that the second phrase merely modifies the first. McNally, 483 U.S. at 358-59. In *Cleveland,* the Court reiterated this interpretation of the statute:

> We reaffirm our reading of § 1341 in McNally. ... Were the Government correct that the second phrase of § 1341 defines a separate offense, the statute would appear to arm federal prosecutors with power to police false statements in an enormous range of submissions to state and local authorities. ... [W]e decline to attribute to § 1341 a purpose so encompassing where Congress has not made such a design clear.

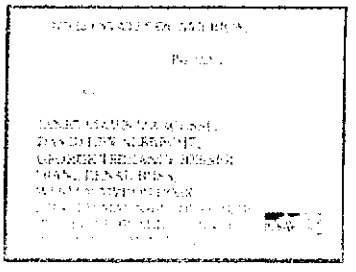
Cleveland, 531 U.S. at 25-26 Copyright Cases or Patent Cases.

WOOD TV8 24 HOUR NEWS 8 www.woodtv.com • Grand Rapids, MI

Eight people found guilty of stealing millions from hundreds of investors

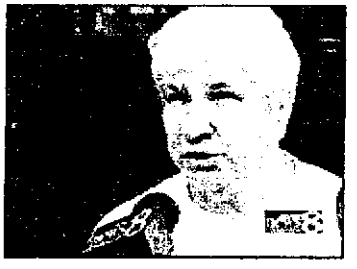
By [redacted]

VIDEO (Update, Grand Rapids, June 15, 2005, 10:49 a.m.) Seven years and $160,000 later, Sue Jager received the answer to her prayers. "My aim was justice and we got it this afternoon," said Jager after the court hearing in Grand Rapids on Tuesday.



Eight defendants have been found guilty

Jager and her husband are just two of 600 people who invested part of their life savings into The Access Financial Group. Members of the phony company convinced investors they could create a church and their financial investment and return would be tax exempt.



Sue Jager, one of the victims

But federal prosecutors say Access Financial was a Ponzi scheme. The people who ran the group stole $20 million of investors' money and bought homes, cars, and boats, and paid off credit cards.

Federal Prosecutor Mike Schipper says they were good at covering their tracks, which is why it took federal investigators four years to find a money trail. "To track this was incredibly difficult... money wire transfers all over the world," said Schipper.

Assistant U.S. Prosecutor Tom Gezon

But the company folded three years ago and eventually Jan Marcusse, the company ring leader and her seven associates, would end up in federal court facing charges for mail fraud, money laundering, and tax evasion.

Last month when the trial started three group members pleaded guilty, and on Tuesday the remaining five were found guilty.

It took a 12-member jury three hours to deliberate and come back with guilty verdicts on 80 different counts. "We were pleased. They apparently spent the last four weeks listening to the evidence very well," Assistant U.S. Attorney Tom Gezon said.

But even with guilty verdicts, there's no guarantee investors will ever get their money back. Still, it's case closed for prosecutors and the end of a long chapter for hundreds of investors.

The eight defendants will be sentenced in October.

EXHIBIT N-10

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wood TV 8 24 HOUR NEWS 8
www.woodtv.com • Grand Rapids, MI

Eight people now convicted in investment scheme

By Dray Clark

(Update, Grand Rapids, June 14, 2005, 6:46 p.m.) Eight defendants have been found guilty in the case that prosecutors are calling one of West Michigan's largest ponzi schemes.

The scheme's ring leader, Janet Marcusse, along with four others were convicted Tuesday with 80 different counts, including mail fraud, tax evasion and money laundering.

The suspects, part of a group called Access Financial, stole about $20 million from some 500 investors. Prosecutors say it was a fraudulent company.

Prosecutors say the bulk of those investors were in West Michigan, but the crime spread to such states as Wisconsin and Colorado.

The trial started in May. The jury got the case around 1 p.m. Tuesday, and it took jurors 15 minutes to read all 80 counts against the suspects.

Last month, three of the defendants pleaded guilty.

The other five, including Marcusse, all held out, trusting and believing they could convince a jury they were not guilty. But that jury came back Tuesday, after just three hours of deliberating, with a guilty verdict.

"A lot of pain, a lot of suffering. A lot of damage has been done. But we hope, we hope that this will repair some of the damage that was done by these destructive people, "said Sue Jager, one of the victims.

"We basically were able to show that this was a big ponzi scheme, that the promises made were hollow promises, and that in fact they weren't doing what they said they were doing with these monies," said Assistant U.S. Prosecutor Tom Gezon.

This was a very elaborate and very complex ponzi scheme. In fact, it took federal investigators some four years to get to the bottom of this case.

The eight defendants will be sentenced in October.

EXHIBIT O-10

scheme. But keep in mind she doesn't have to do a thing.

But also keep in mind that she's done a lot in attempting to take the blows from the government. I mean, she has tried to help herself out as much as she can, and I've tried to assist her as much as I can. We don't have the charts and the graphs and the boxes and all the people, but we're still attempting to show you what we think is important.

Now, this might be good news to you, but this is the last chance that I'll have to speak to you. When I'm done, I'm done. When I'm done, Mrs. Marcusse is done. The government will have one more time to stand up, and sometimes you can tell how well or I can tell how well I've done when you hear Mr. Gezon say Mr. Kaczor said this and Mr. Kaczor said that.

Just keep in mind that neither I nor Mr. Gezon can change the evidence. We can't change the facts. We can't change what has been presented to you. All we can do is make an argument, and that's what we're doing now. We're making an argument based upon the evidence.

You know, obviously I've prepared a closing argument. 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.

Now, Mr. Gezon did say that she admitted that she was involved in using investor money to invest -- or to pay other investors, and she did admit that, and maybe that's what he meant. She did admit that. But keep in mind that may just be one element of what she's charged with. It's not the be-all and end-all of what she's charged with.

Again, I hope not to take hours and hours. I have evidence I want to go through. But again, I want you to understand that she's been -- maybe that's not a good way to say it. Obviously, she has been the brunt of this investigation. She's been the brunt of this trial. I'm sure that you've heard the name Marcusse -- you probably hear it in your sleep at home. I mean, this weekend you're probably trying to relax thinking, Oh, I've got to get Marcusse out of my head, because you keep hearing it. The only word that you've heard more than Marcusse is Marcusse. But you hear it, you hear it over and over and over.

But she's willing to take the blows that the government has brought and she's willing to do the best she

MR. VALENTINE: I was merely responding to Mr. Gezon's assertion. Thank you.

THE COURT: You made your point. Let's bring the jury in.

You referred, Mr. Gezon, to Mr. Reid, and I thought there was a Mr. Reid Pixler. Is that the person you're talking about?

MR. GEZON: That is. I misspoke.

THE COURT: Okay.

(Jury in at 1:18 p.m.)

THE COURT: You may be seated.

Proceeding with our next witness, please.

MR. GEZON: Thank you. I would call Mr. Reid Pixler to the stand, Your Honor.

REID PIXLER,

A witness called at 1:18 p.m. by the government, sworn by the Court, testified:

DIRECT EXAMINATION

BY MR. GEZON:

Q Can you give us your name, sir?

A Yes, sir. My name is Reid Pixler.

Q And your occupation?

A I'm an assistant United States attorney in Phoenix, Arizona.

Q And how long have you been with them?

A A little over sixteen years.
Q And do you investigate fraud, investment fraud cases there?
A **That's** part of my duties in the Forfeiture Unit.
Q Let me ask you, did you have an occasion to seek a court order to seize certain bank accounts which contained funds of what was suspected fraudulent activity connected to an investment fraud?
A Yes, sir, I did.
Q And approximately how many funds were -- how many dollars were in these bank accounts that you seized?
A There were slightly more than eleven and a half million dollars seized in a series of bank accounts in California and in Philadelphia.
Q And did persons then make claim to your office claiming that the funds that were in there were theirs and that they had been victims of fraud?
A **That's** correct.
Q Was one of those persons who made such a claim one George T. Besser?
A Yes, sir.
Q From Michigan?
A Yes, sir.
Q Did Mr. Besser claim that he was the owner and an innocent victim of those funds that were in that account?

A Yes, sir.
Q And how much did he claim that he had given to someone that ended up in these bank accounts?
A One million dollars.
Q And were you able to determine and trace whether or not those funds had come from him?
A Yes, sir.
Q And approximately how much money could you trace that was his one million dollars?
A There were a number of accounts and the money was commingled. We were able to, using some computers, determine that no more than approximately $675,000 could be attributed to the funds deposited into the contaminated accounts.
Q So basically you could identify about 675 of his original million?
A It was just a few dollars less than that. I don't remember the exact number.
Q And did you require -- do you require claimants to sign a particular document under oath that they are innocent owners?
A That's correct.
Q And they're not part of the scam itself, the scheme itself?
A That's correct.
Q Did you require that of Mr. Besser?
A I did.

Q I direct your attention to what we've had marked as Exhibit 380. Do you have a copy with you, sir?
A No, Your Honor -- or no, sir, I don't.
Q Otherwise I have one here. Is this the written settlement agreement that Mr. Besser signed claiming that these funds were in part his?
A Yes, sir.

MR. GEZON: Your Honor, I'd move to admit the exhibit, and I intend only to refer to certain paragraphs electronically.

THE COURT: Subject to the previous objections and for the reasons the Court previously stated, a portion that this Court's understanding is the government has been instructed to avoid and that which the government is told it may put into the evidence will be now permitted.

MR. DUNN: It's also my understanding, Your Honor, that when and if it goes back to the jury --

THE COURT: Yes.

MR. DUNN: -- it will be redacted, sir. Thank you.

THE COURT: Yes, yes.

MR. KACZOR: Thank you, Your Honor.

THE COURT: Continue.

BY MR. GEZON:
Q Did Mr. Besser claim that that money was personally his and not aggregated funds of others?

A That's correct.
Q I direct your attention to what we've identified as Paragraph 11 of the document. Can you show me Paragraph 11? Page 7, Paragraph 11. Would you read this, please?
A Yes, sir. "Unless otherwise noted, claimant declares --"
Q Let me stop you there, I'm sorry. Who's the claimant?
A In this case the claimant was George Terry Besser.
Q The person claiming that these funds were his?
A That's correct.
Q All right.
A "Unless otherwise noted, claimant declares that claimant is the sole owner of the defendant funds which claimant caused to be 'invested'" -- "invested" is in quotes -- "in the fraudulent scheme and the funds do not represent the aggregated funds of others from whom claimant obtained the funds. Claimant further asserts that claimant earned no commission, fee or compensation of any nature as the result of the placement of these funds with the fraudulent high yield program."
Q Did you also require Mr. Besser to acknowledge that he had given his money in this case to what is apparently an investment fraud?
A I did, sir.
Q And did you ask him to recognize certain aspects of this one and did you list those aspects?

A Yes, sir. I listed the factors that were essentially identified in the complaint.

Q Can you show us Paragraph 3, Cindy, which commences on Page 3 towards the bottom? And does this paragraph contain a number of factors which you asked Mr. Besser to acknowledge?

A That's correct.

Q Can you read those for us?

A Certainly. "Generally, Prime Bank instrument fraud or high yield investment fraud is identified by some, if not all, of the following factors."

Q Let me interrupt you there, Mr. Pixler. These are factors that you composed. This isn't in the judgment itself, is it? These are factors that you composed?

A These are factors that I had drafted in this document.

Q All right. Continue.

A "A. A solicitor will offer an opportunity to participate in a 'program'" -- "program" is in quotes -- "in which an investor must be found to qualify on the basis of dollar contribution, degree of investor sophistication, background check to insure the funds are, quote, 'clean, clear, and of non-criminal origin' and/or the execution of contracts which are carefully designed to recite false facts such as there has been no solicitation, that the contract does not involve the sale of securities, or that the investment is structured in the form of a loan and the invested funds --"

EXHIBIT Q-10

Jeffrey Matz in Phoenix, Arizona, and that's -- we seized the accounts that he had control or influence over.

Q So there were other claimants, meaning someone who made a claim to some of this money that was seized, other claimants besides Mr. Besser?

A Oh, many. Many claimants.

Q So you had a lot of these settlement agreements?

A Yes, sir, and everyone signed essentially the same agreement. It changes a little bit for the amounts and things, of course, but --

Q And basically when you researched it and worked with Mr. Besser and his attorney on this one, you came to the conclusion that approximately $675,000 was in the process of wrongfully being taken from Mr. Besser?

A I wouldn't say it was wrongfully taken from Mr. Besser. It was put into a program that was going to be -- the purpose was to have it invested in a Prime Bank fraud scheme and it would all be dissipated. I don't know that Mr. Matz necessarily was going to be taking it, but it would be lost as the result of the investment in this type of program.

Q And so ultimately at some level you were sort of protecting the interest of innocent people and you were sort of helping Mr. Besser get his money back?

A All the people, yes, sir.

Q And so Mr. Besser, according to this document, was not --

he was involved in this fraud, but he was being taken advantage of?

A Apparently so, yes, sir.

Q And you were working on remedying that?

A Yes, sir. If I might explain, the reason it was called a forfeiture action was the named people that appeared to be the owners of the accounts, their interest was forfeited to the government and we reserved all people that fit in the category as a victim, we treated them as claimants and did not litigate with them, but achieved these settlement stipulations for people that were other than the targets of the investigation.

Q And this type of litigation can go on for quite a long time, can't it?

A Yes, sir.

Q This is very involved litigation, forfeiture litigation, when people are making claims and you're going to object. This could go -- I mean, this could be a big deal to try to work through, couldn't it?

A At the time that this was executed, the case was over, sir.

Q And was this one of the last settlements that the United States made?

A No. What I'm saying is that the litigation with respect to the targets had been obtained by a default judgment. The litigation was over, and all we ended up having to deal with

was the determination of the legitimacy of the victims to assure that they were not aggregators of funds.

Q And so part of your job at the U.S. Attorney's Office was to make an evaluation of whether the claim my client, Mr. Besser, made was a viable claim?

A That's correct.

Q And you made that determination?

A Based on the execution of this agreement, yes, sir.

Q And as a result of it, he was given back or his attorney was given back $675,000 plus or minus with the interest?

A Plus interest, yes, sir.

MR. DUNN: Thank you very much, sir.

THE COURT: Other cross-examination?

MR. KACZOR: Your Honor, could I have just a moment to speak with Mr. Dunn?

THE COURT: Certainly.

(Mr. Kaczor and Mr. Dunn conferred.)

MR. KACZOR: Thank you, Your Honor. I don't have any questions.

MR. GEZON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. GEZON:

Q Mr. Dunn asked you if your only job was to determine if this -- if Mr. Besser was a victim or if this was his own money, and you said his own money and make sure he was not an

aggregator?
A That's correct.
Q What do you mean by that?
A The people engaged in these Ponzi fraud high yield investment programs are often a multi-level. There are many different Ponzi fraud operations within the structure of -- this one was referred to as the Isle of Man project. Many people aggregate funds; that is, get their family and friends to invest into the fund or go out and sell it for commission, and then they have the money and, of course, no ability to present the funds to an investment program that will accomplish any of the results that are specified in their presentations. So they look for someplace to invest the money, and that's what we were looking to be sure of is that there was not any kind of an operation that we could identify.
Q So by signing this document as he did, he was representing that he was not an aggregator and that these funds were his personal funds?
A That's absolutely correct. That was the concern.
MR. GEZON: Thank you.
THE COURT: Anything else? Just one question. This was signed in May of 2000?
THE WITNESS: Yes, sir.
THE COURT: After the seizure?
THE WITNESS: Well after the seizure.

THE COURT: When was the seizure?

THE WITNESS: Your Honor, I have that information in my file in my briefcase. I can give you the exact date. I don't know that it's reflected in the document. I don't recall.

MR. GEZON: Your Honor, perhaps the filing number would give us some indication.

THE WITNESS: The filing number would tell you the --

THE COURT: I say that because on the top of Page 3 in Paragraph 2, there's some -- there's a date. I don't know if that relates to this or not.

THE WITNESS: That's the date, Your Honor. On or about that time period, May 15, 1999, there had been dispatched from Phoenix, Arizona, two teams of United States Customs Agents. One group went to California and the other went to Philadelphia. They separately obtained seizure warrants from magistrate judges in those two jurisdictions and seized the funds.

THE COURT: So that the seizure would have happened after that date?

THE WITNESS: It would have happened on or about May 15th. The seizure warrants were obtained shortly before that. I know it took us ten days to get the bank in Philadelphia to give the money up. They wanted to keep the

Q Did you ever meet Mr. Besser?
A I have not. I've talked to him on the phone several times back in those early days when Valley Boyz Investment Club was in business.
Q Okay. You said that Mr. Besser, Terry Besser, was referred to as whose partner?
A Jan. Jan told us she had a partner and his name was Terry Besser.
Q Okay. So you weren't able -- your investment group, that's called Valley Boyz?
A Valley Boyz Investment Club, LLC.
Q Was not able to come up with the million that Jan had originally asked for?
A Yeah, could not.
Q But you came up with something over $500,000?
A Yes, sir.
Q So did the investment not work, or you said they came up with some money?
A Jan wired us the money to the investment club's account at F & M Bank, which is now Citizens Bank in Appleton, to create the million-dollar amount, and then that money was wired by the president of the bank to I believe it was the Suisse Bank in the Bahamas, and the account was --
Q Okay. What came of that investment?
A After probably two or three weeks, we still not had

received the cards in the mail for the signators to that account that were supposed to be Terry Besser and Larry Wagnitz, and so we called on several occasions. We never could get through, but left a message. Terry called back on a couple of occasions. We talked to Jan once or twice and said that they would be forthcoming. We even called a lady by the name of Ms. Brown at the bank in the Bahamas and found that the money was no longer there.

MR. KACZOR: Your Honor, excuse me. I'm going to object to what someone at the bank in the Bahamas told him.

THE COURT: Response?

MR. SCHIPPER: It's not offered for the truth, Your Honor.

THE COURT: What's it offered for?

MR. SCHIPPER: Just offered for what his understanding was happened with the money or where the transaction was.

THE COURT: That's being offered for the truth, then. It may be -- objection sustained. It may be stricken.

MR. KACZOR: Thank you, Your Honor.

THE COURT: Move on.

BY MR. SCHIPPER:

Q Did you ever get your money back?

A Yes.

Q The investment club?

A Yes.
Q How did that happen?
A Sometime between must be April and the end of June in 1999, Jan called us, told us there had been a problem with the million dollars and with the trade it was in. It was in a bank in the Isle of Man off the coast of England, and that her and Terry were sending back an equivalent amount of money to what the investment people in the club had put in and they wired that into F & M Bank, and my partner, Dave Richter, who had the checkbook for Valley Boyz wrote checks back to all of the participants for their money. And then Jan further faxed us or sent us in the mail a letter that we had to sign agreeing that if that million dollars ever appeared and came back, that it would be -- their money would be returned to them, which we did.
Q Okay. So to clarify it, your investment club that sent this half-a-millionish dollars, you got that money back?
A Yes, sir.
Q What were you thinking at that time about this investment and Ms. Marcusse?
A Well, it didn't work, and it was only a short time after we got our money back that she called us and said she had a conventional trade going. If we or any of the other people wanted to get in totally outside and away from Valley Boyz Investment Club, that we were -- she would allow us to do

The Grand Rapids Press

Fraud figures get prison time [2 And 3 And 4 Edition 1]

The Grand Rapids Press - Grand Rapids, Mich. Author: The Grand Rapids Press Date: Oct 18, 2005 Start Page: B.2
Section: City & Region Text Word Count: 90

Document Text

GRAND RAPIDS -- Stiff sentences continue to be handed out in the Access Financial fraud. George "Terry" Besser got a 20-year prison term last week, while Don Buffin Jr.'s punishment was 15 years. Besser, a frail man in his 60s, could die in prison. Besser, however, got a break of sorts because U.S. Chief District Judge Robert Holmes Bell could have ordered a life term. Access Financial was a $20.7 million Ponzi scheme that either recycled or misspent investors' money. The ringleader, Jan Marcusse, is to be sentenced Oct. 28.

Abstract (Document Summary)

Stiff sentences continue to be handed out in the Access Financial fraud.
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EXHIBIT S-10

Muskegon Chronicle, The (MI)

November 1, 2004
Section: B
Page: 2

Topics:
Index Terms:
LOCAL-Region GRAND RAPIDS

Ponzi scheme swindler sentenced to prison
Author: *Chronicle News Service*

Article Text:

Two years after the collapse of West Michigan's largest financial fraud, a judge said there's more lost than money.

"You never would have been able to get away with this in another community. ... You tore that fabric of trust which people have with one another," U.S. Chief District Judge **Robert Holmes Bell** told Dan Broucek.

"It will not, in this generation, be rejuvenated. ... To an extent, it's irreparable," he said.

Dan Broucek, 51, was sentenced to seven years in prison Friday for running a nearly decade-long Ponzi scheme that topped $130 million.

He paid interest to people who agreed to give short-term loans, with a pitch that he was using the money to buy and sell loads of household goods.

When calculated on an annual basis, the interest rate was 50 percent or more — sometimes higher than 1,000 percent.

But as Broucek now freely admits, he wasn't brokering deals for batteries, motor oil or panty hose through Pupler Distributing. The Grand Rapids man was soliciting money from investors to pay off loans from other investors.

Memo:
bulldog edition

Record Number: B2_11_01_04_3550

EXHIBIT U-10

The Grand Rapids Press

Swindler must be resentenced ; Appeals court says judge exceeded guidelines; [All Editions]

The Grand Rapids Press. **The Grand Rapids Press**. Grand Rapids, Mich.: Jun 24, 2005. pg. B.1

Abstract (Document Summary)

A three-judge panel from the 6th U.S. Circuit Court of Appeals in Cincinnati issued an opinion Wednesday that Daniel Broucek's sentence of 84 months in prison exceeded a guideline range of 63 to 78 months.

U.S. Chief District Judge Robert Holmes Bell sentenced Broucek, 52, last October, saying he tore at the fabric of trust people have with one another when he swindled money from people who invested in his Pupler Distributing company.

Broucek's betrayal collapsed in 2002 when Bank One froze a Broucek account with $6 million in assets.

Full Text (393 words)

GRAND RAPIDS – A Grand Rapids man convicted of defrauding investors out of nearly $50 million in a Ponzi scheme must be resentenced, a federal appeals court has ruled.

A three-judge panel from the 6th U.S. Circuit Court of Appeals in Cincinnati issued an opinion Wednesday that Daniel Broucek's sentence of 84 months in prison exceeded a guideline range of 63 to 78 months.

U.S. Chief District Judge Robert Holmes Bell sentenced Broucek, 52, last October, saying he tore at the fabric of trust people have with one another when he swindled money from people who invested in his Pupler Distributing company.

Broucek told lenders he was brokering deals for batteries, motor oil and panty hose and then selling them at increased prices. He promised about 700 investors, including several prominent West Michigan residents, interest rates of 50 percent or more in the Ponzi scheme.

He actually used the funds to pay personal expenses and then return cash to people who earlier loaned him money.

Broucek admitted spending nine years going down a "slippery slope" while wheeling through nearly $134 million from investors, including Ronald A. DeYoung, the former owner of Great Day Food Stores, and Paolo Scalici, a former nightclub owner.

Broucek's betrayal collapsed in 2002 when Bank One froze a Broucek account with $6 million in assets.

Checks began bouncing and investigators turned up the heat when contacted by investors who were getting burned in the deals.

EXHIBIT V-10

When Broucek was sentenced last year, Bell imposed consecutive prison terms of 48 months and 36 months for the two counts of mail fraud and transportation in aid of racketeering.

Broucek and his attorney, Christopher Yates, appealed the sentence in oral arguments June 2.

Yates could not be reached for comment Thursday.

While the appeal was pending, the U.S. Supreme Court ruled that the guideline provisions cannot be treated as mandatory, only as advisory.

The appeals court said "even though the district judge sentenced Broucek above the applicable guideline range, the district judge began his analysis with the understanding that the guidelines were mandatory."

Chuck Gross, first assistant U.S. attorney, said Thursday he was not surprised by the appeals panel's ruling, given what the Supreme Court said about sentencing guidelines. Gross said he did not know whether his office will appeal to the full 6th Circuit.

– The Associated Press contributed to this report.

People: Broucek, Daniel
Section: *City & Region*
Text Word Count 393
Document URL:

EXHIBIT V-10

The Grand Rapids Press

Defiant scam artist sentenced to 25 years; [All Editions]

Ed White / The Grand Rapids Press. **The Grand Rapids Press.** Grand Rapids, Mich.: Oct 29, 2005. pg. A.1

Abstract (Document Summary)

The 90-minute hearing was dominated by [Jan Marcusse]'s rambling monologues. As 10 rows of spectators watched, she blamed her woes on the "gross abuse" of federal authorities and promised that her conviction would be overturned.

Deputy marshals grabbed Marcusse, locked her in handcuffs and removed her after she ignored [Robert Holmes Bell]'s order to remain silent.

In brief remarks to the judge, [Mike Schipper] said he had looked up "heinous" in the dictionary to describe Marcusse's crimes.

Full Text (405 words)

GRAND RAPIDS -- Cocky and arrogant to the end, the leader of a $20.7 million swindle was ejected from court without hearing her sentence.

"You do whatever the hell you want," Jan Marcusse yelled as deputy marshals whisked her out a side door Friday after she refused to obey the judge.

Marcusse, 49, will have a long time to reflect on her defiance.

She was sentenced to 25 years in federal prison for fraud, money laundering and conspiracy, the crimes of a three-year scheme to fool 577 investors into believing they could safely earn tax-free returns.

> Among white-collar crimes in West Michigan, the punishment "is really off the charts. There's nothing even close," Assistant U.S. Attorney Mike Schipper said outside court.

The government said Access Financial was a Ponzi scheme. More than $8 million was collected and passed from early investors to new investors. The balance enriched Marcusse and her allies or was frittered away through failed get-rich-quick strategies.

The victims included many Steelcase workers or retirees who were unsophisticated investors. Marcusse's team said they could set up a "church ministry" and treat monthly interest payments as tax-free income.

"If the devil ever walked this Earth, she was it. ... A professional con artist -- what a terrific occupation," investor Sue Jager, 64, told U.S. Chief District Judge Robert Holmes Bell.

Marcusse stood just a few feet away, sneering.

The 90-minute hearing was dominated by Marcusse's rambling monologues. As 10 rows of spectators watched, she

EXHIBIT W-10

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EIGHT SENTENCED TO FEDERAL PRISON FOR INVESTMENT FRAUD SCHEME

Grand Rapids, Michigan – October 28, 2005 - United States Attorney Margaret M. Chiara announced that the ringleader of a large investment fraud scheme was sentenced today for her role in operating a complicated scam that collected approximately $20.7 million from 577 victims. Janet Mavis Marcusse, age 49, formerly of Grand Rapids, Michigan, was found guilty by a jury on June 14, 2005 of 60 counts of mail fraud, money laundering and tax fraud. Today, the Honorable Robert Holmes Bell, Chief Judge of the Western District of Michigan, sentenced Marcusse to 25 years in prison and ordered her to pay $12,651,244.80 in restitution to the victims she and her co-defendants defrauded. Marcusse was also ordered to pay a $6000.00 special assessment. Marcusse's prison term will be followed by three years of supervised release.

The Charges, Convictions and Sentences:

Marcusse was one of eight defendants indicted by a grand jury in October 2004. The indictment charged the eight defendants with 82 counts involving mail fraud, money laundering and tax fraud. The charges related to each defendant are outlined below. A jury listened to

evidence for four and one-half weeks and returned guilty verdicts on all counts against five of the defendants: Marcusse, George Terrance Besser, Donald Maynard Buffin, Jr., William Edward Flynn and Jeffery Alan Visser. The other three defendants pleaded guilty in mid-trial. David Rex Albrecht pleaded guilty to conspiracy to commit mail fraud. Wesley Myron Boss and Diane Renae Boss pleaded guilty to conspiracy to commit mail fraud, money laundering and tax fraud. All the defendants were sentenced to federal prison, ordered to make restitution to the victims and were ordered to serve a three-year term of supervised release following their respective prison sentences. The defendants received the following sentences:

Name	Sentencing Date	Term
Janet Mavis Marcusse	10/28/05	25 years' imprisonment
David Rex Albrecht	10/07/05	5 years' imprisonment
George Terrance Besser	10/13/05	20 years' imprisonment
Diane Renae Boss	10/07/05	10 years' and one month imprisonment
Wesley Myron Boss	10/07/05	8 years' and one month imprisonment
Donald Maynard Buffin, Jr.	10/14/05	15 years' imprisonment
William Edward Flynn	10/27/05	9 years' imprisonment
Jeffery Alan Visser	10/27/05	15 years' imprisonment

The Scheme to Defraud

The evidence presented at the defendants' joint trial showed that they operated and promoted an investment scheme which they claimed was secret and unavailable to the general public. The defendants also represented that their investment activities had a long history of high monthly profits plus complete safety of a customer's principal. They claimed that their organization operated as a church or charitable entity which allowed their investors to receive their "profits" tax free. Supposedly, the investors' money funded highly profitable financial

activities in international markets not accessible to the average investor. Investors were paid a regular monthly "interest" check of between 3-10% which made the scheme look legitimate. In fact, the defendants were simply using new investor dollars to pay old investor "interest."

From approximately 1998 to the end of 2001, the defendants, operating as the Access Financial Group, took in approximately $20.7 million from 577 investors. 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.

The subsequent investigation showed that the alleged international trading markets touted by the defendants did not exist; that the monthly "interest" checks were not generated from successful financial activity but were simply the victims' own money paid back to make the scheme look profitable; and that the victims' principal was not kept safe from risk but was spent by the defendants for houses, cars, airplanes, travel, jewelry and other luxury items. All the funds were spent by the defendants by the time the scheme collapsed in 2001. The defendants reported none of the income they each received from victims' funds on their federal tax returns. The defendants washed their receipt of funds from victims by using several bank accounts into which they placed the victims' funds in successive transfers to hide their activity. Many of the bank accounts the defendants opened were in the name of nonexistent church organizations.

The trial evidence showed that each of the defendants helped create the illusion that the Access Financial Group was a highly successful and legitimate investment organization.

Janet Mavis Marcusse and George Terrance Besser were the founders and leaders of Access Financial. Diane Boss was a promoter and office manager. David Rex Albrecht was a promoter. Wesley Myron Boss, Donald Maynard Buffin, Jr., Jeffery Alan Visser and William

Flynn were major salesmen and promoters of Access Financial.

The investigation, which began in 2001, was conducted jointly by a task force of agents from the Ottawa County Sheriff's Department, the Internal Revenue Service and the Federal Bureau of Investigation. In 2002 Marcusse took all of the records of Access Financial and fled the West Michigan area. She was a fugitive until 2004, when she was located and arrested living in a cabin in the woods in rural Missouri. The investigators searched more than 150 bank accounts and reviewed more than 10,000 financial transactions to trace the whereabouts of the approximately $20.7 million received by the defendants. They determined that approximately $8.4 million was paid to investors in fake "interest" checks to lull the older investors and to attract new investors. Approximately $4.8 million was spent by eight defendants for houses, cars, airplanes, bars, cash expenditures of all kinds, travel and other luxury purchases. Charts of their individual spending are available for inspection. Approximately $7.4 million was spent by the defendants to promote the scheme and to make it appear to be a legitimate investment venture. None of the eight defendants reported their income from Access Financial on their federal tax returns, resulting in a tax loss of more than $1.5 million. Investigators were able to recover little of the original $20.7 million sent to Access Financial by investors. Many of the victims were retirees who had given their pension funds to the defendants for safe keeping.

Ms. Chiara wishes to thank the agents and officers of the task force who dedicated countless hours to bringing this investigation and prosecution to a successful conclusion. 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.

Maurice M. Aouate, Special Agent in Charge, Internal Revenue Service Criminal Investigation stated, "Identifying and combating actively promoted tax schemes is one of our highest compliance priorities, but the Access Financial Group took it one step further, by 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."

##END##

EXHIBIT X-10

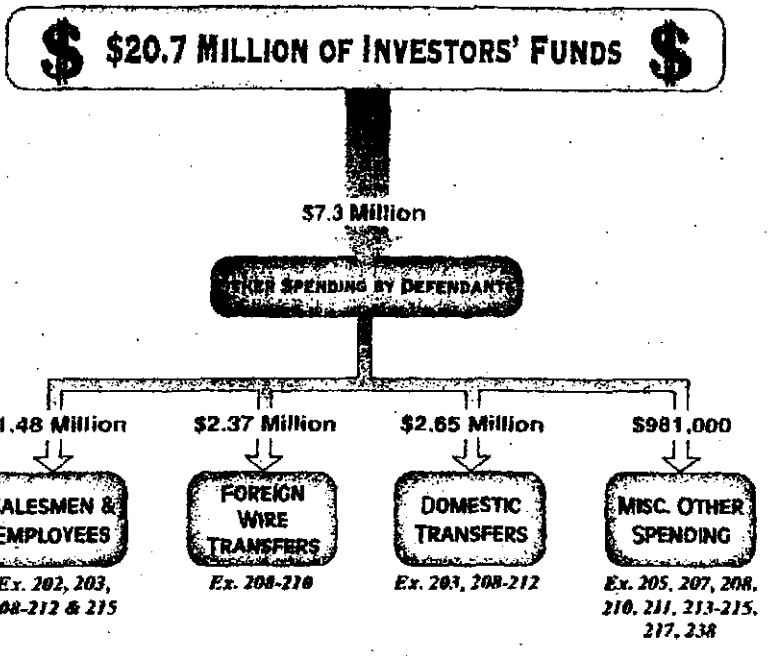

EXHIBIT Y-00

credit cards, you know, that had two people's names on it, but we weren't sure who it was, so we didn't put it under anybody in particular, but that's just money they spent. Those are trips to Luxembourg, those expensive hotels on a card that she and Billy had, for example, and other things like that.

Then what do we have? We have foreign wire transfers and domestic wire transfers, and he explained that they went all over the place, Europe, Japan, whatever. But you know what those are, those other things there? Those are foreign wire transfers. That means she sent 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 what she was doing was just simply using other people's money to make it look like this was going well and spent millions between her and her defendants to live well in the meantime.

Let's remind ourselves of one other thing. Agent Flink and the analysis of the records showed not one penny of money came back to this pot that they were paying people in. Not one penny ever came back from some program, some high yield program. So the victims were basically getting fleeced with their own money all the time from beginning to end.

We know now, of course, that these high yield programs that she pitched don't exist. They never have existed. They're a fiction created by con men who seem to