

EXHIBITS

A-11 to Z-11

1 Each use of the mails in interstate commerce to
2 advance or to further or carry out the scheme or plan to
3 defraud or scheme or plan to obtain money or property by means
4 of false or fraudulent pretenses, representations, or promises
5 may be a separate violation of the mail or the wire fraud
6 statute.

7 Now, to act with "intent to defraud" means to act
8 knowingly with the intention or purpose to deceive or cheat.
9 An intention to defraud is accomplished ordinarily by a desire
10 or a purpose to bring about some gain or benefit to oneself or
11 another person or by a desire or purpose to cause some loss to
12 some person.

13 In order to sustain its burden on Counts 1 through
14 39 of the indictment, it is not necessary for the government
15 to prove that a defendant personally did every act
16 constituting the offense charged. As a general rule,
17 whoever -- whatever any -- as a general rule, whatever any
18 person is legally capable of doing, he or she can do through
19 another person acting as his or her agent. So if the acts or
20 conduct of another is deliberately ordered or directed by a
21 defendant or deliberately authorized or consented to by a
22 defendant, then the law holds that defendant responsible for
23 such acts or conduct just the same as if that defendant
24 personally had done that act.

25 Now, Counts 43 through 57 of the indictment accuses

Newspaper Deliveryman Gets New Trial in Shooting of Boss

 Associated Press

Published: December 09, 2005 10:45 PM ET

TRAVESE CITY, Mich. A former deliveryman for an Upper Peninsula newspaper has been awarded a new trial in the shooting death of his boss as coworkers fled in terror more than seven years ago.

Nathan Paul Hanna was convicted of first degree-murder and given a life sentence in the July 23, 1998, killing of Anthony Gillespie, circulation manager of The Evening News of Sault Ste. Marie. The jury found Hanna guilty but mentally ill, rejecting his insanity defense.

The verdict was upheld by the Michigan Court of Appeals, and the state Supreme Court refused to hear the case. But U.S. District Judge Robert Holmes Bell granted Hanna's petition for a new trial, saying his conviction was tainted by prosecutorial misconduct and improper police questioning.

Hanna's trial attorney, Elizabeth Church, acknowledged repeatedly he had fired the fatal shots, and Bell said in his ruling there was "virtually no doubt" Hanna had done so.

"This case, however, concerns the fairness of (his) criminal trial," Bell said.

He ordered the state to re-try or release Hanna within 90 days of his Nov. 17 order. Hanna, 46, is being held at Riverside Correctional Facility in Ionia.

Brian Pepler, the Chippewa County prosecuting attorney, was out of town Friday and could not be reached for comment. He told The Evening News on Thursday that his office was prepared to bring the case to trial a second time.

Public defender Valerie Newman, who represented Hanna during his appeals, said the conviction should have been overturned before reaching the federal court.

"It's taken too long to get justice for Mr. Hanna," Newman said. "Textbook errors were committed in this case and they should have been remedied long ago."

Witnesses testified that Hanna carried a 12-gauge shotgun into the newspaper's circulation department, spoke briefly with Gillespie, then shot him in the head. They said he shot Gillespie a second time, then walked away.

Some employees, unaware the gunman was gone, hid inside the darkroom more than five hours as police cordoned off the area.

Police shot Hanna several times three days later after he was spotted walking along a road outside town, still carrying his shotgun.

While recovering in the hospital, Hanna gave a bizarre tape-recorded statement in which he admitted killing Gillespie, describing him as the "Antichrist," a biblical symbol of evil.

A government psychologist testified Hanna was legally insane — unable to tell right from wrong or to resist the compulsion to commit a crime.

Farrell Elliott, then the prosecutor, acknowledged Hanna had mental problems but said they didn't meet the threshold for acquittal.

In his ruling, Bell said Hanna's confession could not be considered voluntary even though he hadn't requested an attorney. He was medicated, in pain, suicidal and hadn't eaten for days, the judge said.

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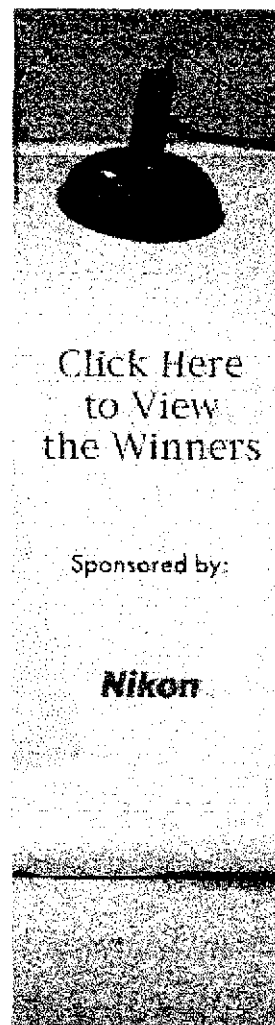
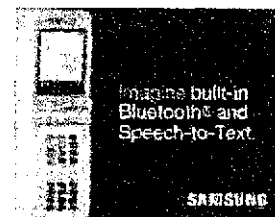
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Bell also faulted Elliott for making improper comments that could have prejudiced the jury against the insanity defense. The failure of Hanna's attorney to object to those remarks was ineffective representation, also grounds for a new trial, Bell said.

Evening News publisher Howard Kaiser said a second trial would be difficult for his staff.

"It's a real shame for everybody," Kaiser said. "It's a waste of time and money and it's just reopening the wounds."

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Jailing of Afghan Publisher Ignites Debate on Free Speech
The conviction of an Afghan magazine publisher on blasphemy charges after he dared raise questions about women's rights and the justice system in his country's nascent democracy's has had a chilling effect on other Afghan journalists and threatens to seriously erode freedoms achieved since the fall of the Taliban in 2001.



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TO: Melvin Houston
15346 Asbury Park
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5/22/06

PACKAGE 2 OF 2

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JANET MARCUSSE

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277_Motion_Service	384_Jan_Witness_List_5_20_05
285_Boss_Object_Limine	385_Bell_Denies_Witness_List_5_20_05
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309_Jan_Pretrial_Memo	546_Jan_Claim_COMB_DoBoer_Gezon
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338_Bell_Opinion_Motion_in_Limine	551_2_Jan_Kramer_WILT_AFF_9pgs
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CASE NOS.: 05-2586 and 05-2668

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JANET MAVIS MARCUSSE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

DEFENDANT-APPELLANT MARCUSSE'S
PROOF BRIEF ON APPEAL

MELVIN HOUSTON, P-36280
Attorney for Defendant-
Appellant J. Marcusse
15346 Asbury Park
Detroit, MI 48227-1545
(313) 835-6479

TABLE OF CONTENTS

INDEX OF AUTHORITIES ii and iii

STATEMENT REGARDING ORAL ARGUMENT 1

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION 2

STATEMENT OF QUESTIONS INVOLVED 3 and 4

STATEMENT OF THE CASE/PROCEDURAL HISTORY 5 - 8

STATEMENT OF FACTS 9 - 14

SUMMARY OF ARGUMENTS PRESENTED 15 and 16

ARGUMENTS:

- I. WHETHER DEFENDANT'S RENEWED MOTION FOR JUDGMENT OF ACQUITTAL, WHICH WAS MADE AT THE CLOSING OF ALL PROOFS, SHOULD HAVE BEEN GRANTED 17 - 19
- II. THE REFERENCE BY A WITNESS FOR THE PROSECUTION TO STATEMENTS MADE BY ONE OF THE CO-DEFENDANTS EXONERATING HIMSELF, WHILE IMPLICATING DEFENDANT MARCUSSE OR ONE OF THE OTHER DEFENDANTS, DENIED DEFENDANT MARCUSSE A FAIR TRIAL 20 - 21
- III. THE DISTRICT COURT JUDGE COMMITTED REVERSIBLE ERROR WHEN HE DENIED DEFENDANT'S REQUEST TO CALL CERTAIN WITNESSES TO TESTIFY ON HER BEHALF 22 - 23
- IV. WHETHER THE DISTRICT COURT JUDGE SHOULD HAVE USED MORE THAN JUST DEFENDANT MARCUSSE'S DEMEANOR DURING THE TRIAL TO ASSESS HER REHABILITATIVE NATURE WHEN ISSUING THE PERIOD OF HER SENTENCE 24 - 25

CONCLUSIONS/PRAYER FOR RELIEF 26 - 27

PROOF OF SERVICE

ADDENDUM

Mr. Stinger then testified that in June of 2001 interest payments to him stopped. (TT, Vol. II, pp. 146-147). Mr. Stinger reported being made a series of empty promises about the location of his principal and the whereabouts of his interest payments. (TT, Vol. II, pp. 148-153). Mr. Stinger denied receiving any additional interest payments and reported losing his entire principal. Due to the loss of his retirement proceeds, Mr. Stinger ended his testimony reporting having to return to work at 62 years of age. (TT, Vol. II, pp. 156-157).

In addition to certain investors, the prosecution also called as a witness one of the criminal investigators for the Internal Revenue Service (IRS), Mr. James Flink. (TT, May 25, 2005, May 26, 2005 and June 1, 2005, Vols. VIII, IX and X, pp. 1685-1761, 1878-1998 and 2036-2150, respectively). Agent Flink's testimony was damaging to the defense. He testified the project operated by defendants was, in his opinion, a Ponzi scheme⁸. (TT, Vol. VIII, pp. 1690-1700).

Mr. Flink, who reported working for the IRS for 31 years, testified he and his assistants reviewed all of the deposits and withdrawals to the various accounts related to Access Financial and its other entities. Agent Flink testified the project had 20 main bank accounts with 70 other related accounts. (TT, Vol. IV,

⁸ Named after Charles Ponzi who employed used of a similar scheme in the early 1900's. Such schemes are similar to but not the same as pyramid schemes. (TT, Vol. I, pp. 40-50 and the testimony of Mr. Leonard Zawistowski, May 19, 2005, Vol. IV, pp. 775-811).

pp. 1691-1719). During his review, which covered the entire period of the project's operation, Mr. Flink identified 577 investors who contributed about \$20.7 million. He reported about \$8.4 million of the total was used to pay interest to investors, \$4.8 million was apparently used by defendants (in varying amounts per defendant) to purchase everything from Cessna airplanes to paying personal obligations, while another \$980,000 had been transferred to accounts used by more than one defendant and could not be assigned to any one individual. (TT, Vol. VIII, pp. 1733-1759, Vol. IX, pp. 1929-1931). Mr. Flink added that \$2.3 million of the total was transferred to various locations overseas, but that (in most cases) he could not verify what these amounts were used for. (TT, Vol. VIII, p. 1759 and Vol. IX, p. 1983).

In any event, Agent Flink made it clear during his testimony he found no evidence that any of the money received from the investors by Access Financial earned any interest from any source. (TT, Vol. VIII, pp. 1690-1691). Similarly, Mr. Flink denied finding any evidence the foreign transfers made by defendants were related to any legitimate investments. (TT, Vol. IX, pp. 1929-1945).

During her testimony, Defendant Marcusse referred to two large foreign investments she relied on that, due to no fault of her own, failed. (TT, June 8, 2005, Vol. XV, pp. 2999-3064, June 9, 2005, Vol. XVI, pp. 3109-3338 and June 10, 2005, Vol. XVII,

pp. 3357-3358). Defendant Marcusse testified that one such investment, the Bahamas CD Program, was expected to return \$25 million on a \$350,000 investment. (TT, Vol. XVI, p. 3214). However, the \$25 million check she and her co-investors received as payment did not clear. (TT, Vol. XVI, p. 3199).

Defendant Marcusse also discussed another sizable investment she reported making in the Bahamas involving 5 accounts at the Suisse Security Bank & Trust. (TT, Vol. XVII, pp. 3357-3358). Defendant Marcusse reported this investment expected to return about \$76 million on \$4.2 million, but that the Suisse Security Bank & Trust failed before she could receive any payout. In this connection, Mr. Flink denied having authority to follow up on the transfers of money made by defendants to the various individuals or entities in the Bahamas. (TT, Vol. X, pp. 2123-2143).

As to the count alleging conspiracy to defraud the United States, the prosecution referred to the defendants' failure or refusal to report any of the amounts they received or benefitted from as income for Federal income tax purposes. (See testimony of IRS employee Mr. Paul Crowley, an investigative analyst and court witness, June 1, 2005, Vol. X, pp. 2157-2177). Defendant Marcusse admitted not filing returns during her involvement with Access Financial, noting she considered all amounts received to be gifts. (TT, Vol. XVI, pp. 3169-3173).

ARGUMENTS

I.

WHETHER DEFENDANT'S RENEWED MOTION FOR JUDGMENT OF ACQUITTAL, WHICH WAS MADE AT THE CLOSING OF ALL PROOFS, SHOULD HAVE BEEN GRANTED.

INTRODUCTION:

After the prosecution rested its case, Defendant Marcusse asked the district court judge to dismiss all charges returned against her pursuant to Rule 29 of the Federal Rules of Criminal Procedure. This motion was denied. (TT, Vol. XII, pp. 2390-2414). After all the proofs had closed, including testimony and other evidence in support of her defense, Defendant Marcusse renewed her motion for acquittal. This request, which should have been decided using all the evidence offered by the parties, was also denied. (TT, Vol. XVII, pp. 3486-3492).

STANDARD OF REVIEW:

The general rule is that a trial court's denial of a defendant's motion for judgment of acquittal will be reversed on appeal only if the evidence offered is insufficient for a reasonable trier of fact to establish guilt beyond a reasonable doubt. United States v. Townsend, 796 F.2d 158, 161 (6th Cir.), cert. denied, 469 U.S. 916 (1984). The standard for review on appeal involves viewing the evidence in the light most favorable to the government, while asking whether reasonable minds might fairly find guilt beyond a reasonable doubt. Jackson v. Virginia,

443 U.S. 307, 319 (1979); United States v. Ayotte, 741 F.2d 865 (6th Cir.), cert. denied, 469 U.S. 1076 (1984).

ANALYSIS AND DISCUSSION:

Nearly all of the investors offered as witnesses for the prosecution reported signing a non-circumvention and non-disclosure agreement with Access Financial that, among other things, denied the employees or agents of Access Financial were making any guarantees to them regarding principal amounts invested or the returns they would earn. This agreement merely stated that employees or agents of Access Financial would use their "best efforts" to earn as much income as possible. When you couple the terms of this agreement with Defendant Marcusse's testimony about the two major -- albeit unsuccessful -- investments she had arranged (i.e., Bahamas CD Program and Suisse Security Bank), the district court judge should have granted her motion.

The written terms of the agreement made between the investors and Access Financial should have prevailed over the oral representations investors reported were made to them by defendants. There are risks associated with any investment; moreover, the higher the return the higher the risk. The fact that defendants used some of the money invested to reward themselves is also irrelevant to the various charges of mail fraud and money laundering.

Like any other fiduciary, Defendant and the others charged in this case were entitled to compensation. The only mistake they made in this regard was not to properly report the amounts received for income tax purposes. However, this omission had nothing to do with the mail fraud and money laundering charges. The other amounts spent by defendants, with the exception of the amounts related to the separate charges of embezzlement brought against the Bosses, were made in an effort to achieve some sort of return for investors.

As a result, even when viewed in a light more favorable to the prosecution, the terms of the agreement made by investors with Access Financial appeared to dictate dismissal of the criminal charges returned against Defendant for wire fraud and money laundering. Accordingly, this Court should set aside Defendant's convictions for these charges and remand the matter with instructions to dismiss all such charges.

II.

THE REFERENCE BY A WITNESS FOR THE PROSECUTION TO STATEMENTS MADE BY ONE OF THE CO-DEFENDANTS EXONERATING HIMSELF, WHILE IMPLICATING DEFENDANT MARCUSSE OR ONE OF THE OTHER DEFENDANTS, DENIED DEFENDANT MARCUSSE A FAIR TRIAL.

STANDARD OF REVIEW:

When reviewing a district court's evidentiary determinations, this Court reviews de novo the district court's conclusions of law, e.g., the decision that certain evidence constitutes hearsay, and reviews for clear error the district court's factual determinations that underpin its legal conclusions. United States v. Reed, 167 F.3d 984, 987 (6th Cir.), cert. denied, 528 U.S. 897 (1999); United States v. McDaniel, 398 F.3d 540, 546 (6th Cir., 2005).

LAW AND DISCUSSION:

On at least two occasions during the trial, witnesses for the prosecution referred to statements by co-defendants exonerating themselves while, at the same time, implicating one of the other co-defendants. (TT, Vol. III, pp. 611-618 and Vol. IV, pp. 672-73). After the first such reference, the district court judge discussed the matter with the parties and warned all counsel to avoid any such references. However, when the testimony of this same witness continued the very next day another inappropriate reference was made.

The introduction of this testimony on these two occasions was clearly inappropriate. This witness was allowed to offer testimony from one of the other co-defendants while, at the same time, denying Defendant Marcusse and the other defendants an opportunity to cross-examine that defendant about his testimony. Such a denial is clearly inconsistent with the adversarial process. Defendant's convictions, as a result, should be set aside and the matter remanded for a new trial.

III.

THE DISTRICT COURT JUDGE COMMITTED REVERSIBLE ERROR
WHEN HE DENIED DEFENDANT'S REQUEST TO CALL CERTAIN
WITNESSES TO TESTIFY ON HER BEHALF.

STANDARD OF REVIEW:

This Court reviews district court's legal determination that evidence is or is not admissible for a legitimate purpose *de novo*. United States v. Marriweather, 78 F.3d 1070, 1074 (6th Cir., 1996) (citing United States v. Johnson, 27 F.3d 1186, 1190 (6th Cir., 1994)).

ANALYSIS AND DISCUSSION:

During a discussion held on June 2, 2005, which occurred towards the end of the prosecution's case in chief, Defendant asked the district court judge to release two individuals from the obligation of having to appear by way of subpoenas to testify on her behalf. (TT, June 2, 2005, Vol. XI, pp. 2218-2228). After discussing these witnesses' anticipate testimony with them, Defendant, with the assistance of counsel, concluded their testimony would not help her case.

At the same time however, Defendant also asked the district court judge to require three other individuals (Messrs. Williams, Hubert and Terlesky) to appear as required. The record revealed at least one of these individuals, Mr. Williams, was expected to testify about one of Access Financial's investment programs or projects being brought before Congress. The district court judge

however, noting that such testimony was irrelevant to the defense of the charges returned against her, denied Defendant's request.

It is certainly conceivable the anticipated testimony from Mr. Williams could have resulted in a member of the jury taking the subject investment option more seriously than he otherwise would have. Moreover, with all due respect to the district court judge's authority to control proceedings in his courtroom, Defendant Marcusse was representing herself and allowing some leeway regarding her decisions to call witnesses should have been allowed.

In light of the district court judge's denial, the verdicts reached by the jury in this case should be set aside and the matter remanded for a new trial.

IV.

WHETHER THE DISTRICT COURT JUDGE SHOULD HAVE USED MORE THAN JUST DEFENDANT MARCUSSE'S Demeanor DURING THE TRIAL TO ASSESS HER REHABILITATIVE NATURE WHEN ISSUING THE PERIOD OF HER SENTENCE.

STANDARD OF REVIEW:

The new general rule concerning this Court's review of the district court's sentencing procedure involves determining whether the sentence issued was reasonable. U.S. v. Booker, 160 L.Ed.2d 621, 543 U.S. 220, 125 S.Ct. 738 (2005), and its companion case of U.S. v. Fanfan, 2005 WL 50108

LAW AND DISCUSSION:

The district court judge made the following comment during the Sentencing Hearing held in this case:

* * *

"The Court believes that its responsibility extends both to review the nature and circumstances of the offense in its entirety that the jury returned guilty verdicts on, but also the history and characteristics of this defendant that is before the Court for sentencing. Unfortunately, this defendant's complete lack of cooperation handicaps this Court's ability to learn a little more about this defendant, the parts of this defendant that might be more favorable to her. The parts that may be more compelling of the opportunities for rehabilitation are not before this Court by virtue of her inability to cooperate and her lack of cooperation with the presentence officer and this Court."

(Transcript of the Sentencing Hearing, October 28, 2005, p. 45).

It was clear throughout the trial and other related proceedings that Defendant frustrated the district court judge.

(See, e.g., Vol. I, pp. 7-17; June 6, 2005, Vol. XIII, pp. 2642-

43; June 13, 2005, Vol. XVIII, pp. 3494-3496 and 3677-3682; and the Sentencing Hearing, October 28, 2005, pp. 46-47). Even though I did not have the benefit of being present during the trial, it was equally clear Defendant, who -- with the assistance of co-counsel -- was representing herself, was just as frustrated with the judicial process.

Despite Defendant's unusual behavior during these proceedings, and contrary to the district court judge's representation quoted on the previous page, a review of the Presentence Investigation Report shows Defendant has no prior criminal record or pending charges. Defendant has a bachelor of science degree in education from Davenport College, and her employment record prior to her involvement with Access Financial clearly demonstrates she was an active and productive member of society.

In this connection, it is our position the district court judge should have considered more than just Defendant's behavior during the proceedings below to issue the sentence ordered served in this case. A 25-year sentence in this case would appear inconsistent with both the spirit and intent of the United States Supreme Court with its decision in Booker, supra. All things considered, the district court judge abused his discretion in this case and the sentence ordered served by Defendant should be set aside and the matter remanded for re-sentencing.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

Criminal Case No.: 05-2586 and
05-2668
Lower Ct. No.: 04-CR-00165-01

JANET MAVIS MARCUSSE,

Defendant-Appellant.

THOMAS J. GEZON, P-24066
Assistant U.S. Attorney
330 Ionia Avenue, N.W.
Suite 501, The Law Building
Post Office Box 208
Grand Rapids, Michigan 49501-0208
(616) 456-2404

MELVIN HOUSTON, P-36280
Attorney for Defendant-
Appellant Janet M. Marcusse
15346 Asbury Park
Detroit, MI 48227-1545
(313) 835-6479

ADDENDUM

Below are the items Defendant-Appellant Marcusse proposes to
include in the Appendix:

INDEX TO DOCUMENT REFERENCES

<u>Description</u>	<u>Date</u>	<u>Record Entry No.</u>
Index to Docket Entries for Case No.: 04-CR-00165-01	N/A	N/A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540

POTTER STEWART U.S. COURTHOUSE

CINCINNATI, OHIO 45202

UNITED STATES OF AMERICA

v.

JANET MAVIS MARCUSSE

CASE NO: 05-2586 and 05-2668

DISTRICT COURT OF MICHIGAN

ROBERT HOLMES BELL, JUDGE

MOTION UNDER FRAP 10(b)&(e)(2) TO CORRECT MISSTATEMENTS
IN EVIDENCE AND OF LAW IN THE RECORD & TO SUBMIT EXHIBITS
WITH APPELLANT BRIEF TO PREVENT A MISCARRIAGE OF JUSTICE

FRAP 10

SUBMITTED PRO SE

BY: Janet Marcusse

501 Capital Circle, NE

Tallahassee, Florida 32301

MOTION UNDER FRAP 10(b)&(e)(2) TO CORRECT MISSTATEMENTS IN
EVIDENCE AND OF LAW IN THE RECORD & TO SUBMIT EXHIBITS WITH
APPELLANT BRIEF TO PREVENT A MISCARRIAGE OF JUSTICE IN THIS APPEAL

NOW COMES Appellant, Janet Marcusse, pro se, in this appeal to request and make the claim for a reversal of the convictions in the trial court, for reasons to be made clear in her Appellant Brief, including that of the government's chief evidence at trial having been tampered with before submission and which was used to materially misrepresent the facts and tax law to the jury thereby causing the jury to improperly convict the accused and which is now being used to improperly present the facts and the law of the case to the Sixth Circuit so that these unlawful convictions, constituting a miscarriage of justice, may be sustained.

Marcusse is blocked from making such a motion in the district court by court order (R. 601). She was not even permitted to submit a motion in the trial court requesting copies of trial exhibits for use in this appeal (R. 660). As the result, she has no means to correct material misrepresentations and errors in the trial court's record.

The prosecution has filed a motion (R. 688) requesting the certification and forwarding of various exhibits from the record of the trial court to the Sixth Circuit Court of Appeals. Many of these exhibits consist of tampered-with evidence or misrepresentations of tax law.

Pre-existing litigation in the trial court establishes that the prosecution in the instant case tampered with government exhibits 1, 2, 3 and 33 prior to submission on the record (GX-1, GX-2, GX-3, GX-33). This proof is contained in Exhibit B to the

Appellant Pro Se Brief (Also refer to Exh. A filing attached to Case No. 1:03-cv-00454-RAE, Western District of Michigan). Attachments were removed from investor newsletters stating the investments were in stocks in order to permit the government to present the knowingly false theory that these investments were instead that of a "prime bank" fraud. This false theory was used by the trial judge to rule in regards to all defense witnesses and evidence which were not of a "prime bank" nature that such "alleged investments" were "irrelevant" to the charges (R. 401), thus preventing any kind of meaningful defense and causing a fundamentally unjust trial. This "ponzi law" is now being promoted by the government to the Sixth Circuit upon this appeal. As it is founded upon tampered-with evidence, it should not be permitted to stand as presumption, assumption, or fact.

GX-1 was tampered with to include within it the investor contract prior to its submission at trial. GX-31, a 6/99 investor newsletter, had its attachments removed prior to submission thereby keeping the details to the stock investment accounts held at Suisse Security Bank & Trust off the record. GX-80, 82, 83, and 84, purporting to represent the "business" records of the accused were tampered with to remove the existence of associate Tom Wilkinson before submission at trial.

The indictment fraudulently represented the "investment company" as Access Financial Group. No investor checks attached to the 39 mail fraud counts were from Access Financial Group. The Appellee Brief fraudulent represents Access and Sanctuary Ministries as "corporate entities" (p. 30), so that tax law

might be misapplied in this case. The distributions made to investors on a "joint venture" or "private placement" were misconstrued as taxable income when they were instead a non-taxable distribution under 26 U.S.C. §731.

The trial judge denied Marcusse's verbal and written claims to proceed pro se as of the first morning of trial, refusing to allow her to make any objections in front of the jury (Court at TR 18, 26, 31).

The following government exhibits all consist of misrepresentations of the tax law as based upon the previously described evidence tampering of GX-33, GX-1, GX-2, and GX-3: GX-89, 90, 91, 92, 93, 94, 95, 96, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 170, 171, 172, and 330.

Based upon the government's false theory of only "prime bank" investment fraud, the IRS refused to include in their chief summary exhibits, GX-171, and GX-172, any investments made on behalf of investors that were not of a "prime bank" nature. As the result, over \$12 million of other types of investments, such as in that of stocks, were not included in the IRS's summary exhibits. Thus, no "pass through" funds going into non-prime bank investments were considered in the representations of unreported "income" made by the IRS to the jury about the accused. The false inclusion of investor contracts agreeing to diversification in GX-1 was used to ignore this agreement.

After the trial, the prosecution quietly removed \$147,377 of "pass through" funds going into investments from the unreported "income" allegations that had been made against the Bosses at trial (R. 501-1, p. 6; Items 147, 171, PSR; GX-91, 92, 110, 111, 112, 138, 139, 140, 155), but the government has never corrected the records of any of the other accused in like manner. Special Agent, "expert" IRS witness for the government, Darline Goeman, admitted during trial that "pass through" funds are not taxable income (Goeman at TR 2350). GX-330 misrepresents the tax law in regards to omitting the investor profit sharing plans involved so that the government might falsely represent the accused had claimed Access Financial Group was an IRA custodian.

The refusal of the trial court to permit Marcusse to have copies of the exhibits used at trial has hampered her ability to include possible other examples of evidence tampering, misrepresentations, or omissions in the record of the trial court. Therefore, Marcusse reserves the right to contest other government exhibits or misstatements if found.

Marcusse also filed numerous FRCP Rule 60(b) claims for fraud upon the trial court's record (R. 307, 309, 546, 551, 563), including that of a complaint of court reporter misconduct in regards to tampering with the trial transcript (R. 590). Three days later, Marcusse was made a "restricted" filer (R. 601). The government has not denied the allegations of fraud made in the Rule 60(b) fraud claims. As the result, Marcusse requests that she be permitted to file exhibits with her Appellant Brief to help clarify and establish the issues that she is submitting

for appeal, including that of evidence tampering and misstatements of law, as she is not permitted to file any motions at the trial court.

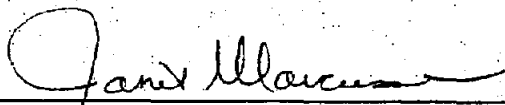
The Supreme Court in Chessman v. Teets, 354 U.S. 156, has ruled that, "Consistent with procedural due process, a state court's affirmance of a defendant's conviction of a capital offense upon a seriously disputed record, whose accuracy he has no voice in determining, cannot be allowed to stand, even though the state court held that the record was adequate as a matter of state law and that, in any event, the inaccuracies claimed by the defendant would not have changed the result of this appeal." Marcusse's right to due process would be denied if she were unable to establish these material misrepresentations by the prosecution upon the record of the Sixth Circuit Court of Appeals.

FRAP 10(e)(2) permits omissions or misstatements to be corrected and a supplemental record to be filed upon appeal, and under (C) indicates that this permission may be granted by the court of appeals.

Respectfully Submitted,

Date: _____

6/17/07



Janet Marcusse, Pro Se
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CERTIFICATE OF SERVICE

This is to certify that I have caused the service of a true and correct copy of the following:

MOTION UNDER FRAP 10(b)&(e)(2) TO CORRECT MISSTATEMENTS
IN EVIDENCE AND OF LAW IN THE RECORD & TO SUBMIT EXHIBITS
WITH APPELLANT BRIEF TO PREVENT A MISCARRIAGE OF JUSTICE
IN THIS APPEAL

upon the following individuals at the following addresses, by placing same in a sealed envelope, bearing sufficient postage, for the delivery via First Class United States Mail Service to:

Leonard Green, Clerk of Court
Sixth Circuit Court of Appeals
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202

Brian Crutcher, Case Manager
Sixth Circuit Court of Appeals
538 U.S. Post Office &
Courthouse Building
Cincinnati, Ohio 45202

Michael Schipper
Ass't. U.S. Attorney
330 Ionia Avenue, N.W., #501
Grand Rapids, Michigan 49501

Melvin Houston
15346 Asbury Park
Detroit, Michigan 48227

as sent on this 19th day of June, 2007.



Janet Marcusse, Pro se
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1 A Yes.

2 Q This Crawford Project was a project that had to do with
3 Nigeria; is that correct?

4 A Yes.

5 Q And that's the investment in which this \$25 million check
6 came in, but was never honored by the bank, correct?

7 A Yes.

8 Q Now, Agent Flink testified. You heard him, correct?
9 Flink, not Flynn. Agent Flink testified?

10 A Yes.

11 Q And you heard him testify, correct?

12 A Yes.

13 Q And you heard him testify that he tracked all the money,
14 wire transfers, everything, and he went through a list, a
15 number, because a lot of them were small, most of them were
16 under \$10,000, that went to Nigerian individuals. You heard
17 him say that, right?

18 A Are you talking about the Western Unions?

19 Q All the wire transfers that he testified about tracing to
20 Nigeria. You heard him testify about that, right?

21 A Yes.

22 Q So if in fact those numbers total \$300,000 or \$350,000,
23 not the four million one hundred that you're claiming, then
24 it's your testimony today that Mr. Flink is wrong?

25 A That's correct.

1 Q Okay. And these monies that went to Nigeria were part of
2 this Crawford oil project; is that correct?

3 A Yes.

4 Q Okay. Now, you heard Mr. Flynn testify, didn't you? You
5 were here in court?

6 A Yes.

7 Q Okay. Did you hear Mr. Flynn testify that the money that
8 he wired to Nigeria, he testified that you told him those were
9 for orphanages, didn't he?

10 A I only told him to wire the money.

11 Q So his testimony that you told him to wire to Nigeria to
12 orphanages, Mr. Flynn was lying?

13 A I only told him to wire the money.

14 Q Did you tell the investors -- let's back up. You didn't
15 tell the investors, did you, that the money was being invested
16 in Nigeria?

17 A I told investors we were diversifying.

18 Q You never told them that you were investing in Nigeria,
19 did you?

20 A Not specifically.

21 Q Worldwide E-Capital. I think we've already established
22 that you have a Worldwide E-Capital, LLC bank account,
23 correct?

24 A Yes, sub account.

25 Q Sub account, but it's a bank account with your signature

1 can somehow put it into layman's terms for us, please.

2 A Okay.

3 Q You give money to the Bahamas or money is sent to the
4 Bahamas, it's sent to some sort of a program. What is the
5 program? What happens to the money?

6 A All right. Initially there were two brokers, securities
7 brokers that were located in Virginia that were doing the
8 program on a very small basis as a trial for themselves and
9 their friends to see how well it worked. And at that point it
10 was located here in the States and they wanted to move it to
11 the Bahamas because the Bahamas was going to be opening their
12 own stock exchange like New York Stock Exchange or Chicago or
13 London, and they thought there was a lot of opportunities
14 there if they could find a bank to partner up with. So a
15 branch of a bank in the Bahamas and a banker made arrangements
16 for these men to be located on-site in their bank. It would
17 be somewhat similar, but not quite, to look at a lot of the
18 banks here, Comerica, Old -- what is Old Kent called now? I
19 don't know.

20 Q Fifth Third?

21 A Yeah, National City and the like, have their normal
22 standard tellers and bank officers on-site, that a lot of them
23 now have an office in their buildings that's their registered
24 securities broker, financial services person where you can buy
25 stocks, bonds, and, you know, your normal what we would call

1 Merrill Lynch stuff.

2 Well, these two securities brokers partnered up with
3 the bank we ultimately used in the Bahamas and actually had a
4 large room, back room to be exact, precise, in that bank
5 branch location where they set up I think it was like nine
6 humongous television screens, it looked like, and it really
7 did. It looked like a big sports bar, which is where that
8 simile came from in a newsletter. And it was this big massive
9 room of computer screens where one would watch three over here
10 and one would watch a couple screens over here because one was
11 a very, very short-term quick trade situation, and then the
12 middle and the other side, this side was the long term, and it
13 didn't need to be watched because it was something that would
14 be placed into trade for at least two weeks, a month, possibly
15 even longer, so there was no reason to sit there and watch
16 it. The middle ones could be something around a couple hours
17 to a couple of days, maybe a week at most.

18 So one of the brokers watched most of the screens,
19 the medium term or timed trades, and then the other watched
20 the -- I mean, there wasn't really anything to watch with a
21 month-long trade, but just there would be like a note that
22 would come up, this needs to be done, this stock's coming --
23 this, you know, position is coming due, and then something
24 would need to be done with it. But the most attention was
25 paid to the one that was the quick, immediate, something was

1 always happening to it. In fact, it was interesting, they
2 would have to make arrangements for -- they couldn't take
3 lunch at the same time, couldn't go to the bathroom at the
4 same time. There would always need to be somebody that would
5 be there to be able to get in that chair and babysit those
6 positions so that nothing would go wrong per se.

7 So what they were doing, they were purchasing stocks
8 and they were doing it on a leveraged or a margin basis, which
9 for a fee you can -- and if you've got the collateral, which
10 is where the certificate of deposit came into play, if you've
11 got the assets, you can get a loan from a securities brokerage
12 house where you can leverage your position. So for a fee,
13 then, you can get say ten times. Let's say you've got \$1,000.
14 Then you could actually play with ten times the money because
15 you were acting in a margined or a leveraged position.

16 So you can have -- you can make a lot of money or
17 you can really lose a lot of money if you don't call your
18 position or make your trades well. So that was why nobody was
19 even allowed to go to the bathroom without a replacement
20 broker in that chair to make sure that those positions were
21 being handled and monitored properly.

22 Now, I don't even myself understand fully what all
23 that computer program could do. But it would come up like the
24 little dog if you're familiar with the Microsoft word
25 processing program with a little note saying, Okay, now you

1 need to buy this or you need to sell that. So it would
2 actually tell the brokers what to do and they would be need to
3 immediately execute those trades, you know, and some of you
4 may have been in some brokerage houses before and seen the
5 monitors where they actually show stocks being traded and the
6 like. But this was a pretty impressive operation that was all
7 set up, and it was in an actual bank, which made it all the
8 more impressive.

9 Q What was the bank? What was the name of the bank that it
10 was set up?

11 A There were -- the main bank was Suisse Security Bank &
12 Trust, and the branch where the stock program was located was
13 called Swiss Mercantile, and --

14 Q Let me ask you, did you -- and I understand that this
15 program became your flagship program, and so ultimately you
16 invested or sent money to this program; is that correct?

17 A Yes.

18 Q Before doing that, did you travel to the Bahamas and go
19 to the bank or do any research into the program?

20 A We had a CPA actually travel to the Bahamas and look at
21 where this was going to be located. The brokers were still in
22 the States and they did not move over to the Bahamas until
23 into 1999. So we did have a little drop time there as far as
24 returns, and that's where you saw some of this movement in
25 rates of returns there for a number of months because they

1 were moving and getting set up properly. But we had a CPA
2 named James McKenna, we had a number of lawyers that looked
3 into it for us just to make sure, you know, as far as
4 background checks and the like that, you know, you were
5 dealing with something, something real and that the people
6 were what they purported to be.

7 Q Let me ask you, did you physically go to the bank
8 yourself?

9 A Yes, yes.

10 Q To the Suisse -- is it pronounced "Swiss?"

11 A "Swiss."

12 Q Suisse Security Bank & Trust?

13 A Yes.

14 Q I'm going to show you what's been marked as proposed
15 Marcusse Exhibit P and ask you if you can identify that.

16 A Yes. This is a very dog-eared brochure from the bank
17 itself in Nassau, Bahamas.

18 Q Okay. Was that provided to you personally?

19 A Yes.

20 Q Where did you get it?

21 A In the bank itself. One of the personal accounts
22 managers' names was -- I believe it was Laurie Brown, and she
23 set up international business companies or corporations for
24 people and was just like a personal accounts manager for
25 moving money and doing what you wanted done.

1 MR. KACZOR: Okay. Your Honor, I'm going to move
2 for the admission of Marcusse Exhibit P, please.

3 MR. SCHIPPER: Can I see it, please?
4 (Government's counsel reviewed proposed Marcusse Exhibit P.)

5 MR. SCHIPPER: Never seen it before, but no
6 objection, Your Honor.

7 THE COURT: Received.

8 MR. KACZOR: Mr. Gezon has seen it.

9 BY MR. KACZOR:

10 Q Let me ask you just to make clear, this is not -- this
11 doesn't describe the program. This is just a brochure from
12 the bank that the program was based in; is that correct?

13 A That's right. It's just a brochure on the bank itself.
14 It has nothing to do with the stock program other than it's
15 the bank where it was located.

16 Q Okay. Now let's move ahead a little bit if we can. Did
17 ultimately you become or you start investing in the Bahamas CD
18 Program?

19 A Yes, we started putting amounts in, and then on a regular
20 basis continued to add to it.

21 Q Do you know when the first time you sent an amount was?

22 A I believe it was around October of 1998.

23 Q Okay. Your Honor, may I approach? I'm going to show you
24 what's been marked as Marcusse Exhibit AA and just ask if you
25 can identify what that is.

1 A That is the listing of dates and amounts and from which
2 account the money was sent.

3 Q Okay. And that's something you prepared; is that
4 correct?

5 A Yes.

6 Q All right. And earlier before the break I mistakenly
7 indicated the government had prepared it; is that right?

8 A Yes, this is something I --

9 Q The government did not prepare that?

10 A No.

11 Q All right. What records did you use in order to prepare
12 that exhibit?

13 A I used the bulk exhibits from the statements from Access
14 and the statements from Sanctuary Ministries and the
15 statements from Freedom Church of Revelation, and each one of
16 these will have a corresponding wire transfer on the same date
17 from the account listed.

18 Q So that would essentially be a summary exhibit of the
19 actual accounts?

20 A Yes.

21 MR. KACZOR: Okay. I'd move for its admission,
22 Your Honor.

23 MR. SCHIPPER: Objection, Your Honor. There is no
24 payee on there whatsoever. Additionally, Your Honor, it does
25 not come -- he points to these boxes. It did not come from

1 these boxes. She listed several other -- Revelation
2 Ministries and several other things that aren't a part of this
3 that she then used to put that together. I'd object. There's
4 not a foundation of authenticity to have that admitted, Your
5 Honor.

6 THE COURT: She indicated she prepared it and it
7 represents her work product. It appears, then, that it's
8 relevant and material. The objection goes to the weight that
9 may be given to it. It will be received subject to the weight
10 to be given to it.

11 MR. KACZOR: Thank you, Your Honor.

12 BY MR. KACZOR:

13 Q Can you tell us, then, over what period of time how
14 much -- over what period of time what amount of money was
15 invested into the Bahamas CD Program?

16 A Once we became more comfortable with the program, the
17 information coming in and all of that, we put it in based on
18 what was coming in into the program from our side and then
19 based on the returns that we were getting from the Bahamas
20 side. So ultimately by the end of 1999 or about a year and
21 three months' worth of sending funds over there, we determined
22 that the thing was self-sufficient enough to continue to roll
23 with the returns that we were getting to more than adequately
24 cover what was coming in as far as new deposits as long as it
25 didn't get over a certain amount. And I'm sure that was just

1 as clear as mud.

2 Q Yeah, and let me say I don't understand it, but I don't
3 think it answers the question. What I understand is you have
4 a summary exhibit in front of you that tells me that over a
5 period of time, X amount of money was deposited by your
6 corporation or Access Financial, Sanctuary Ministries, into
7 this account, and it's my understanding that that amount was
8 over \$4 million?

9 A Yes. The exact amount on here is \$4,226,000.

10 Q Okay. Now, I'm trying to understand your answer. Is it
11 that that amount, that four-plus million, was physical money
12 that was sent to the Bahamas or is that amount money that was
13 sent plus interest that was made while the money was in the
14 Bahama account?

15 A Oh, no. This is just the wire transfers that went over
16 there through the end of 19 -- or basically 12/7 of 1999.

17 Q Okay. So this is your flagship program, and over about a
18 year and a half period of time Access Financial -- can I say
19 that?

20 A Yes.

21 Q They wired over \$4 million to this particular bank?

22 A Yes.

23 Q Okay. Were you getting money back from the program? Now
24 we know you're invested in the program; now we know you're
25 wiring money to the program. Investors are giving you money.

1 MR. VALENTINE: Same objection. It's not admitted
2 into evidence. It's hearsay.

3 THE COURT: I think we're -- are we using it for
4 hearsay or are we using it as a warning?

5 MR. GEZON: Using it as a warning.

6 THE COURT: If it's a warning, then it's not for the
7 truth of the matter; it's just warning.

8 MR. GEZON: Yes.

9 THE COURT: Yes. Go ahead. You can continue.

10 THE WITNESS: Information is put out by the country
11 of Nigeria, the banks in Nigeria, warning individuals about
12 these scams because they're very prevalent in the United
13 States and other places.

14 BY MR. GEZON:

15 Q We heard testimony from Ms. Marcusse about a Branson
16 Project. She asked lots of witnesses about it and she
17 testified about it; is that correct?

18 A Correct.

19 Q And we've heard her testimony now that she actually took
20 money from investors and put it in something called
21 Worldwide -- an account that she opened called Worldwide
22 E-Cap; is that correct?

23 A That's correct.

24 Q And does your investigation corroborate that?

25 A Yes.

1 Q And she puts -- I think we had testimony that she first
2 took out of the Access-Sanctuary money from investors about
3 \$600,000, transferred that to her personal bank account in
4 Michigan, and then transferred that to this Worldwide E-Cap in
5 Las Vegas; is that correct?

6 A That's correct.

7 Q That was about \$600,000?

8 A \$600,000 of money went directly from Access or Sanctuary
9 into her personal account, then went out to Worldwide E.
10 There was other money put into her Worldwide E account. There
11 were other Worldwide E accounts in Las Vegas.

12 Q So we heard Mr. Massman say that when he invested -- he's
13 the fellow that sold Billy one of the planes, and when he
14 invested, he was instructed to send his money directly to
15 Worldwide E-Cap?

16 A Yes, he was.

17 Q So that was placed in there also?

18 A That was placed into Ms. Marcusse's Worldwide E account
19 that she was on.

20 Q Approximately -- well, and then we've heard Ms. Marcusse
21 testify that she sent that to Europe; is that correct?

22 A That's correct.

23 Q And then she sent it to another place in Europe?

24 A Yes, the money went -- apparently what she testified, it
25 went to an individual, a barrister named Sidhu who set up some

1 companies in England, Starbright Management, City Center
2 Management; and then the money was transferred back to Sidhu
3 and then somehow it went back to -- it was transferred from
4 Sidhu to MLC, and then from MLC it was given to Robert Plaster
5 as a down payment or a nonrefundable deposit on the land.

6 Q I understand. So basically she took investors' funds,
7 wired them offshore, stuck them in a couple different
8 accounts, wired them back, and in 2002 took investors' funds
9 after this thing had collapsed and paid money to the Branson
10 Project?

11 A That's correct.

12 Q Her next thing she was doing?

13 A Yes.

14 Q So did the investors in Access get any benefit out of
15 that at all?

16 A No, they didn't.

17 Q We've heard Ms. Marcusse testify about this Bahamas CD
18 Program. How much do your records show of the investors'
19 monies collected in your records, how much of that got sent to
20 the Bahamas CD Program?

21 A We saw wire transfers of approximately \$1.4 million going
22 directly to the Bahamas.

23 MR. GEZON: Now, Ms. Marcusse claims it's \$4.2 and
24 she has a document to that effect. Can you take a look -- Mr.
25 Kaczor, can I see your documents AA and M? I'm sorry, M-AA

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM EDWARD FLYNN,

Movant,

File No. 1:09-CV-451

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

_____ /

OPINION

This matter is before the Court on Movant William Edward Flynn's amended motion pursuant to 28 U.S.C. § 2255, to vacate, set aside, or correct his sentence. (Dkt. No. 29.)¹ Movant was indicted in an 83 count indictment involving eight defendants on October 27, 2004, on the following charges: (1) mail fraud, in violation of 18 U.S.C. § 1341; (2) conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371; (3) conspiracy to commit money laundering, in violation of 18 U.S.C. § 371; (4) conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; (5) promotion money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i); (6) transactional money laundering in violation of 18 U.S.C. § 1957; and (7) concealment money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i). (1:04-CR-165, Dkt. No. 108.) On June 14, 2005, Movant was convicted on all counts.

¹All citations to the current case file, 1:09-CV-451, will be cited directly by docket number. All citations to other case files will include the file number.

were used to generate exhibits. (1:04-CR-165, Dkt. Nos. 478, Tr. at 1989-90, 518, Tr. at 3048.)

As for the alleged suppression of evidence, Movant appears to be arguing that the Court improperly denied subpoenas for bank records that Marcusse sought. On the eve of trial, Marcusse filed a pro se letter directed to the Clerk of the Court with a bare-bones request for subpoenas seeking bank records from three accounts, two purportedly at the Royal Bank of Scotland (Starbright Mgmt Ltd. and City Centre Management Ltd.), and one at Union Planters Bank (MLC Developments Int'l Inc.). (1:04-CR-165, Dkt. No. 333.) The Court denied the motion because it would require the Court "to subpoena the individual responsible for keeping such records at the respective banks," and Marcusse had wholly failed to show that the subpoena expense was necessary for her to present an adequate defense, as required by Federal Rule of Criminal Procedure 17(b). (1:04-CR-165, Dkt. No. 342.) This ruling was manifestly correct, as Marcusse failed to make any showing of necessity.

Movant appears to be arguing that the records would have somehow validated the claim that Marcusse invested money for the benefit of the investors. But the Government did not generally contest that fact. (1:04-CR-165, Dkt. No. 520, Tr. at 3373-75.) That fact – and the "bank records" that may or may not have supported it – was irrelevant, as the Court tried to explain (1:04-CR-165, Dkt. No. 470, Tr. at 8-9) and as the court of appeals agreed in affirming the Court's decision to deny Marcusse's request for other subpoenas to witnesses

F.2d 215, 230-31 (6th Cir. 1990). *See also United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 & n.7 (1982) (Rule 17(b) limitations track scope of Sixth Amendment right to secure witnesses in favor of defendant, which applies only where testimony would have been relevant, material, and vital to the defense). The trial court is granted wide discretion to ensure that the requests are specific, clearly articulating the necessity, and to ensure the process is not being subject to abuse from a defendant's inappropriate requests for witnesses. *United States v. Rigdon*, 459 F.2d 379, 380 (6th Cir. 1972). General assertions of topics the witness may cover do not meet this test. *Id.*; *United States v. Conder*, 423 F.2d 904, 909 (6th Cir. 1970); *United States v. Barker*, 553 F.2d 1013, 1020-21 (6th Cir. 1977). Even on direct appeal, an appellate court will not reverse a district court's denial of a subpoena unless "exceptional circumstances" indicate that the defendant's "right to a complete, fair and adequate trial is jeopardized." *United States v. Moore*, 917 F.2d 215, 230 (6th Cir. 1990). *See also United States v. Blackwell*, 459 F.3d 739, 752 (6th Cir. 2006) ("[T]he Constitution permits judges to exclude evidence that is repetitive . . . only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues.")

Applying this standard – and the court of appeals' ruling that denial of subpoenas for witnesses whose testimony would relate to collateral matters such as how or why certain "investments" Marcusse purportedly made (e.g., the MLC Branson project, or the Bahamas CD) failed – it is manifest that no constitutional error occurred.

purpose of evading the payment of appropriate income taxes.” (1:04-CR-164, Dkt. No. 108.)

As for Movant or his co-conspirators failing to file tax returns, even if such acts or omissions were not fairly subsumed within these express terms of Count 42, “[i]t is axiomatic that all the overt acts in furtherance of a conspiracy need not be alleged in the indictment.” *United States v. Henson*, 848 F.2d 1374, 1385 (6th Cir. 1988). Indeed, the failure to file tax returns in Movant’s case more than qualifies as a sufficient “overt act” in furtherance of a Klein conspiracy to frustrate or defeat the function of the IRS. *See United States v. Shermetaro*, 625 F.2d 104 (6th Cir. 1980); *United States v. Williams*, 649 F. Supp. 1290, 1293-96 (M.D. Fla. 1986). Consequently, Movant’s claim is without merit.

4. Ineffective Assistance of Counsel

Movant alleges that his court-appointed counsel, Anthony J. Valentine, provided ineffective assistance of counsel at trial and on appeal. (Dkt. No. 30, at 153.) As mentioned earlier, unlike Movant’s other claims, this claim is not procedurally defaulted.

Claims of ineffective assistance of counsel are analyzed under the two-prong standard enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). First, the defendant must show that counsel’s performance fell below an objective standard of reasonableness. This requires a showing that counsel made errors so serious that he was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that there is a reasonable probability that, but for counsel’s deficiency, the outcome of the proceedings would have been different. This requires a showing that counsel’s errors were

1 company?

2 A No.

3 Q Did you find any evidence in your search for any records
4 of these alleged investments we heard Ms. Marcusse talk about?

5 A No.

6 Q The records that were at Mr. Visser's house which he was
7 told to bring to the grand jury, did you ever get ahold of
8 those?

9 A No, we didn't.

10 MR. GEZON: Pass the witness.

11 THE COURT: Let's take a brief recess and we'll
12 proceed with that.

13 (Jury out at 10:36 a.m.)

14 THE COURT: We had a sidebar here and it was agreed
15 and the Court instructed that exhibits I believe 161 through
16 165, which were apparently pleadings allegedly filed by Mr.
17 Buffin, those portions of the pleadings that made reference to
18 Mr. Buffin's counsel's status will be redacted by the
19 government and not used at all in this matter. I believe
20 there were two specific references to it and perhaps there's
21 some more. Counsel is expected to review those for the
22 government and do that redacting.

23 Secondly, I was just handed what is referred to as
24 evidence pack. Mr. Kaczor, Ms. Marcusse, are there two packs
25 and are these two packs different from one another? Is that

CERTIFICATE OF SERVICE

This is to certify that I have caused the service of a true and correct copy of the following:

MOTION FOR REMOVAL OF APPELLATE COUNSEL

upon the following individuals at the following addresses, by placing same in a sealed envelope, bearing sufficient postage for the delivery via First Class United States Mail Service to:

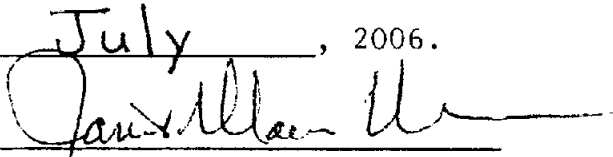
Brian Crutcher, Case Manager
U.S. Court of Appeals for the
Sixth Circuit
538 U.S. Post Office & Courthouse
Building
Cincinnati, OH 45202

Thomas P. Gezon, P-24066
Ass't U.S. Attorney
330 Ionia Ave., N.W., Suite 501
P.O. Box 208
Grand Rapids, MI 49501

Leonard Green, Clerk of Court
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, OH 45202

Melvin Houston, P-36280
15346 Asbury Park
Detroit, MI 48227

as sent on this 31ST day of July, 2006.


Janet Marcusse, Pro Se
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Litigation is deemed filed at the time it was delivered to prison authorities. See: Houston v. Lack, 101 L. Ed. 2d 245 (1988)

The prosecutor also admits during trial, but not in front of the jury, that in regards to the other crime alleged, that of a "tax" scheme, as outlined in Count 42, that the defendants "did things that were basically -- with regard to the Tax Code which no person would do unless they were misreading" it. (Refer to TT 2085). When Janet Marcusse attempted to ask an IRS witness about his grand jury testimony, the trial judge objected. (Refer to TT 2085). When Janet Marcusse asked this witness about Gov. Exhibit 52, a paper of hers entitled, "We Rest Upon the Law", the trial judge excused the jury so that he might give her a verbal thrashing. (Refer to TT 2085-89). The trial judge would not permit her to ask any questions about the Internal Revenue Code (Refer to TT 2087), and complained that because the prosecution was not objecting enough to suit him, it was therefore the "obligation" of the trial court. (Refer to TT 2088). The trial judge also stated that he would not permit any defense "theories" of which he did not approve. (Refer to TT 2088). In Cheek v. United States, 498 U.S. 192 (1991), the Supreme Court ruled that "[a] good faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable...Characterizing a belief as objectively unreasonable transforms what is normally a factual inquiry into a legal one, thus preventing a jury from considering it. And forbidding a jury to consider evidence that might negate willfulness would raise a serious question under the Sixth Amendment's jury trial provision, which this interpretation of the statute avoids."

The main issue is not even necessarily about "willfulness". IRS witness, James Flink, had attributed \$600,000 of "income"

to Janet Marcusse's 2001 1040 federal tax return prepared by the IRS as a substitute return. Agent Flink testified that this \$600,000 was "income" to Janet Marcusse, because the funds had been transferred into Worldwide "E" Capital, LLC, a company she allegedly "owned". (Refer to TT 1923, 3374, and Item 138 of the PSI Report). Government Bulk Exhibit 219 (GX-219) clearly evidenced that Winfield E. Moon owned Worldwide "E" Capital, LLC, not Janet Marcusse. These records in the government's possession also contained copies of the signed Wells Fargo bank receipts that proved this fact as well as the other fact that Mr. Moon had removed \$1.5 million from this account for placement into investments. (Refer to Docket 551, a 60(b) Fraud upon the Court filing; See Exhibit 9 for Nevada Secretary of State papers filed as an Exhibit to Docket 551). This was information given to trial and appellate counsel to demonstrate that the prosecution suborned the perjury of IRS witness, James Flink, to manufacture motive on the behalf of Janet Marcusse for the jury. Agent Flink had truthfully testified that in 1998, the first year of the alleged \$12.1 million "Ponzi scheme", that Janet Marcusse, the "lead" defendant, had \$6,744 in gross income, which had been too small of an amount to have even been required to file a federal tax return. (Refer to GX-148 at TT 2336). Trial defense counsel permits the prosecution and the IRS to commit this fraud upon the jury without objection. (Refer to TT 3163). Appellant counsel in his Proof Brief states that Janet Marcusse admitted that she did not file tax returns for those particular years, but the Brief neglects to mention the exculpatory fact that the reason was that she was not required by law to file a return. This is not a "tax protester" case, as the prosecution will attempt to claim to

United States v. Solivan, 937 F. 2d 1146, 1155 (6th Cir., 1991), states that a "[s]ingle misstep on part of prosecutor may be so destructive of right of fair trial that reversal is mandated." Gravley v. Mills, 87 F. 3d 779, 785 (6th Cir., 1996), stated that counsel's failure to object to serious instances of prosecutorial misconduct constituted ineffective assistance of counsel.

In the Appellant Proof Brief, counsel claims that in his "Statement of Facts" that the Bahamas CD Program was separate from Suisse Security Bank & Trust, which was not true. He further represents to the Sixth Circuit that the Bahamas CD Program was "expected to return \$25 million on a \$350,000 investment" per trial transcript page 3214. (Refer to page 13 of the Brief). This was also not true. Page 3214 of the trial transcript specifically mentions the "Crawford oil project", a different investment, and the \$350,000 mentioned is taken out of context and is only a tiny part of the total which was invested. To misrepresent these investments in this manner suggests that it was done as an "advocate" for the government to support or "stipulate" to the prosecution's other deceitful claim that the Bahamas CD Program was a "prime bank" investment fraud. The government's own evidence and witnesses at trial clearly proved that this Bahamas CD Program was a stock investment program located at Suisse Security Bank & Trust. (Refer to GX-31 and GX-33). As a matter of law, stocks are not defined as "prime bank instruments". S.E.C. v. Pinckney, 923 F. Supp. 76, 78 (E.D.N.C., 1996) defines these "prime bank instruments" as "bank letters of credit or bank guarantees, the trading of which generates profits." [emphasis added]. Further, Suisse Security Bank & Trust was twice endorsed in writing by a senior Dept. of Justice official

prior to having its license revoked by the Central Bank of the Bahamas on 4/2/01. \$31 million went "missing" from the bank as the result, and to this day, is still not resolved. (Refer to Docket 392-2, pgs. 15, 17-18, and Docket 392-2, pg. 26). A "good faith reliance" defense negates intent, an essential element, and a defense which had been made known to the trial court prior to trial. (Refer to Docket 208, p. 8, Docket 243, Docket 392-2, pgs. 11-13).

For appellant counsel to omit as an issue for appeal that the prosecution admitted that a "Ponzi scheme" was not an element in the charge on the trial court's record solely to avoid an acquittal, only to return to calling the crime a "Ponzi scheme" as soon as these fraudulently obtained convictions were obtained, is worse than no counsel whatsoever, for this neglect is to "stipulate" to this fraud. "Without stipulation by the defense, the court may not inform the jury that an element of the charged crime has been established as a matter of law or is an issue for the court to decide." United States v. Gaudin, 515 U.S. 506 (1995). U.S. v. Stoddard, 875 F. 2d 1233, 1237 (6th Cir., 1989), states that, "a new trial must be held if there was any reasonable likelihood that the false testimony would have affected the judgment of the jury."

The prosecution in this appeal can also be counted upon to argue that the convictions cannot be overturned, because, according to Conroy v. Shott, 363 F. 2d 90, 92 (6th Cir.), cert. denied, 385 U.S. 969 (1966), the Sixth Circuit has found that the question of intent in a Ponzi scheme "is not debatable". Any kind of a fair trial or effective defense was entirely prevented by judicial bias, a structural error, prosecutorial misconduct, and ineffective

trial defense counsel, who was prohibited from putting the case to any sort of meaningful adversarial test due to interference from the prosecution and from the trial judge, so that any appeal of the convictions obtained as the result, could be thwarted by the application of this Conroy ruling. Strickland, 466 U.S. at 692, concludes that state interference with counsel's assistance is legally presumed to result in prejudice to the defendant. Janet Marcusse objected to the "bias and prejudice" of the trial judge on the record (Refer to TT 20), but trial defense counsel refused to sign her motion for recusal. For appellant counsel to ignore the vital issue around the "Ponzi" allegation, after being advised by his client that it was absolutely vital to any chance of a successful appeal of the convictions, demonstrates not only the unreasonableness of his position, but suggests that he too may be suffering from the interference of the government in this appeal.

There is substantial independent proof that the prosecution team, including that of Thomas Gezon, Michael Schipper, and Donald Davis, falsified narcotics charges in this case, which were admitted on the trial court's record to not be true and put off as a "clerical error", but which were unquestionably used to deceive at least two foreign governments and their law enforcement officials, to tamper with a foreign barrister. Co-defendant, George Besser, was arrested in Mexico on a fraudulent warrant, after his retirement there a few years prior, which claimed "conspiracy to distribute five kilograms of cocaine". (See Exhibit 11). A United Kingdom barrister, Gurmail Sidhu, used by Janet Marcusse to handle the bank account entitled Starbright, as evidenced by defense exhibit M-X at trial (See Exhibit 12), was terrorized by a raid on his home

1 Q All right. Do you recall discussing with me at any point
2 helping us get collection on a Crawford Oil contract?

3 A I don't recall ever hearing about Crawford Oil at any
4 time in the past.

5 Q All right. Do you recall ever meeting me in your
6 offices?

7 A I think you came to my office one time with Carney, I
8 believe. No, I did not recall that even until recently.

9 Q All right. You had testified you had no idea where this
10 million dollars came from?

11 A I have no idea.

12 Q Is it possible that it came from our organization or
13 myself?

14 A It's possible that Mr. Carney got it from some other
15 source and gave it to me, yes.

16 Q That million-dollar check or wire transfer or deposit,
17 you ended up just keeping the million dollars?

18 A The million dollars was a deposit, a nonrefundable
19 deposit as per the terms of the contract, and the contract
20 obligations that Mr. Carney made were never fulfilled.

21 Q Is your answer yes, that you kept the money?

22 A Well, the money was put on deposit with Evergreen
23 National Corporation and the funds are still there, yes. I
24 still have them.

25 Q All right. How do you account for all of the multiple

1 much, because I just **didn't** have any real interest in buying
2 anything. I was going to move to **Branson** and there were homes
3 on the **Branson** Project property that were going to be empty
4 that we were going to be given as members and associates of
5 that project, so I really didn't have any interest
6 particularly in taking -- I was interested in getting funds
7 for the health clinic.

8 Now, as far as the rest of the group, Mr. Besser,
9 the funds that he handled were wire transfers and cash to go
10 into investments. In fact, as the books currently show, we
11 owe the man 92,000-some-odd dollars in unreimbursed business
12 expenses. And all of the funds that were ascribed to him were
13 wire transferred into investments, as was the \$600,000
14 ascribed to me. That went into an investment with Mr. Moon.
15 But all of the million plus that was ascribed to him went into
16 investments for clients, so Mr. Besser is owed \$92,000.

17 Now, the other associates were paid either a flat
18 amount or they were paid a percentage of what they raised.
19 And we became a little more generous as I saw the accounts
20 perform properly, knowing that clients' funds would be more
21 than adequately covered and taken care of.

22 Q Now, what's the override you were talking about?

23 A I -- let's see. I think it was two percent or three
24 percent, and I'm not sure anymore. I really **don't** remember.
25 It could have even been five. I'm not sure.

NOTICE OF EXCEPTION TAKEN TO APPELLANT PROOF BRIEF

I, appellant Janet Mavis Marcusse, do hereby provide Notice to the Sixth Circuit Court of Appeals that I herein take exception within the 10 days of receipt on June 26, 2006, to the Appellant Proof Brief in its entirety as prepared by court-appointed counsel, Melvin Houston, for just cause and in violation of FRCP Rule 11(b). A separate motion to request the termination of this counsel for cause is expected to follow this Notice of Exception. In the meantime, be it herein noted that Attorney Melvin Houston no longer has the appellant's permission to represent her in any way, shape, or form. The motion for termination of counsel will outline in more detail the just cause which demonstrates that this Proof Brief contains multiple material misrepresentations of the trial court's record to the Sixth Circuit, clear evidence that Mr. Houston did not even read the trial transcript, and that this counsel may be proceeding under a conflict of interest.

The Proof Brief appears to have been especially crafted to "stipulate" to the most indefensible "facts" by an advocate for the government rather than for the appellant. As just one example for purposes of this Notice of Exception to evidence its proper basis, one of the four issues presented for consideration in the appeal, asserts the position that out of the 3 witnesses denied the defense (Messrs. Williams, Hubert, and Terlesky), one of them, Mr. Williams, should have been permitted to testify at trial. (Refer to pages 22-23, Issue III, Proof Brief). 20 defense witnesses out of 31 requested, from a list previously reduced to purportedly save the government money, were denied by the trial

court, not just 3. The reason given by the trial court judge was that any witnesses or evidence relating to "alleged investments" were "irrelevant" to the accusation of a "Ponzi" scheme. (Docket 401). The Proof Brief described this merely as "testimony [that] was irrelevant to the defense of the charges against her", rather than providing just a few words more, as a true advocate for the appellant would have done, in order to adequately disclose how this ruling functioned to deprive Janet Marcusse of a defense and of a fair trial.

The trial transcript evidences that Richard Williams did in fact testify at trial on Tuesday, June 7, 2005. Mr. William's testimony and exhibits, coming from the position as former executive management of MLC Development, Int'l., Inc., and as the former Tribal Chairman of the LVD in Watersmeet, Michigan, entirely impeached the testimony of last-minute government witness, Robert Plaster. Mr. Plaster, a close friend of former U.S. Attorney General, John Ashcroft, testified that he had never been a "principle", executive, co-founder, or shareholder in MLC Development, Int'l., Inc., in West Branson, Missouri. (Williams at TT 2276-80, 2782-83; Docket 392-2, pgs. 1, 2, 3, 24, 25; Docket 309-5, p. 1; Docket 309-6, p. 6; Docket 309-9, pgs. 1-5; Defendant Marcusse Exhibits M-N and M-0). Mr. Plaster had been the beneficiary of at least \$1.2 million of investor funds, who not only was not charged in this prosecution, but who was also permitted to keep these investor funds with the full "blessing" of the United States Government. (TT 3591). These were the same investor funds upon which defendant Janet Marcusse was ordered to pay restitution to the investor victims and to go to

prison for 25 years. This \$1.2 million constitutes almost 5 times the amount of investor funds ascribed to co-defendants, Donald Buffin and Jeffrey Visser, who were sentenced to 15 years in prison each in this matter. Mr. Visser's family invested over \$700,000 and Mr. Buffin's family over \$63,000. This \$1.2 million that Mr. Plaster obtained by fraudulent means does not include an additional \$25.5 million wire transfer assigned to MLC Development by way of a Limited Power of Attorney, which "disappeared" enroute to MLC's Union Planter's Bank account in July, 2002. (Docket 309-4, p. 1). These documents were filed pretrial so that they might be used with the jury, however, because "alleged investments" were "irrelevant" to a "Ponzi" scheme charge, they could not be used with the jury at trial. The 10/28/05 Press Release issued by the Grand Rapids Office of U.S. Attorney, directed at the investors, made no mention whatsoever of this \$1.2 million that Mr. Plaster was able to keep of investor funds.

The other two witnesses, Messrs. Hubert and Terlesky, could have provided additional information regarding Mr. Plaster and his true relationship with MLC Development, but they were not permitted to testify at trial. (Docket 309-6, p. 6). Messrs. Hubert and Terlesky were investors, and as such, they were entitled to testify at trial, but this special status was not mentioned in the Appellant Proof Brief. Even the investor hotline during trial, provided by the Attorney General, claimed that "there were no trials currently scheduled in this case." It is evident that it was entirely to the government's benefit to misrepresent the contents of Issue III, and entirely against the best interests of the defendants the way

these contents described the true facts concerning the events in the trial court. As the result, Janet Mavis Marcusse cannot "stipulate" to this Appellant Proof Brief as submitted by Melvin Houston out of respect, not only for herself, but for the Sixth Circuit Court of Appeals, a lawful tribunal, her co-defendants, or in consideration of the government's mandate to protect the rights of the investor victims in this matter. This mandate would include providing these investors with a legitimate source for restitution, rather than ordering the victims of a "privileged" individual to pay it.

This Notice may be accepted by the Sixth Circuit Court of Appeals as a statement under 18 U.S.C. § 4, and as such, on behalf of all the victims, appellant also pleads for an investigation into this matter as well as sanctions under FRCP Rule 11(c) to apply against any responsible party(s).

This Notice is not to be construed in any way as a request to dismiss the appeal. Appellant, Janet Mavis Marcusse, waives none of her rights.

Finally, appellant requests that her status as pro se in this filing be afforded "liberal construction". Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d. 652 (1972).

Date: July 4, 2006

By: 

Janet Mavis Marcusse, pro se
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July 4, 2006

#17128-045 (used under duress)
501 Capital Circle, N.E.
Tallahassee, FL 32301

Mr. Melvin Houston, P-36280
Attorney at Law
15346 Asbury Park
Detroit, MI 48227-1545


Re: Your Appellant Proof Brief dated June 20, 2006

Dear Mr. Houston:

I am in receipt of your Appellant Proof Brief dated June 20, 2006. It is entirely unacceptable for a variety of reasons, one of which is outlined in the attached Notice for Exception Taken to Appellate Proof Brief as prepared by me and sent by me for filing at the Sixth Circuit Court of Appeals.

The Supreme Court has ruled that I am entitled to effective assistance of counsel that is free from a conflict of interest. Your Appellate Proof Brief evidences that neither of these guarantees is true with your assistance as counsel. As the result, this letter is to officially advise you that you longer have my permission to represent me in any way, shape, or form, and that I will be requesting the Sixth Circuit Court of Appeals for the termination of your status as my appellate counsel for good cause.

Sincerely,


Janet Mavis Marcusse
All Rights Reserved

/jm

Enclosure

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the following:

NOTICE OF EXCEPTION TAKEN TO APPELLATE PROOF BRIEF

upon the following individuals at the following addresses, by placing same in a sealed envelope, bearing sufficient postage for the delivery via First Class United States Mail Service to:

Leonard Green, Clerk of Courts
United States Court of Appeals
For the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202

Melvin Houston, P-36280
15346 Asbury Park
Detroit, Michigan 48227-
1545

Thomas P. Gezon, P-24066
Ass't U.S. Attorney
330 Iona Ave., N.W. Suite 501
P.O. Box 208
Grand Rapids, Michigan 49501

and deposited in the postal box provided for inmates on the grounds of the Federal Correctional Institution, in Tallahassee, Florida 32301-3400 on this 4th day of July, 2006.



Janet Mavis Marcusse
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Litigation is deemed FILED at the time it was delivered to prison authorities. See: Houston v. Lack, 101 L. Ed. 2 d 245 (1988).

STATEMENT OF THE ISSUES

- I. WHETHER THE MOTIONS FOR JUDGMENT OF ACQUITTAL, OR THE MOTION TO VACATE, MADE IMMEDIATELY FOLLOWING THE TRIAL, SHOULD HAVE BEEN GRANTED?

- II. WHETHER CHARGING MULTIPLE CONSPIRACIES IS BARRED BY DOUBLE JEOPARDY; THE COUNTS IN THE INDICTMENT ARE ALSO VOID FOR DUPLICITY?

- III. WHETHER MISLEADING IRS SUMMARY EXHIBITS BASED ON THE SUPPRESSION OF ALL UNDERLYING BANK RECORDS HELD IN THE GOVERNMENT'S POSSESSION, AND THE INACCURATE APPLICATION OF TAX LAW RESULTED IN UNLAWFUL CONVICTIONS?

- IV. WHETHER THE ACCUSED WERE DENIED A FAIR TRIAL BY THE COURT'S RULING THAT "ALLEGED INVESTMENTS" WERE "IRRELEVANT" TO A "PONZI SCHEME" CHARGE, WHICH PREVENTED ALL DIRECT WITNESSES TO INVESTMENTS AND BANK AND BUSINESS RECORDS AS EVIDENCE?

- V. WHETHER THE ACCUSED WERE PREJUDICED BY PRE-INDICTMENT DELAYS. THE RIGHT TO A FAIR TRIAL WAS PREVENTED BY VIOLATIONS OF THE SPEEDY TRIAL ACT?

- VI. WHETHER DUE PROCESS WAS DENIED AND THE ACCUSED WERE PREJUDICED BY A LAST MINUTE COURT ORDER DENYING THE RIGHT TO PROCEED PRO SE?

- VII. WHETHER THE COURT PERMITTED PLEADINGS IN OPPOSITION TO THE GOVERNMENT'S CASE AS EVIDENCE OF GUILTY INTENT IMPROPERLY EXTENDING THE LENGTH OF THE ALLEGED "CONSPIRACY" AND PREJUDICING THE ACCUSED BY PROCEDURAL FLAWS CAUSING PRETRIAL DETENTION?
- VIII. WHETHER IT WAS PREJUDICIAL TO THE ACCUSED AND REVERSIBLE ERROR FOR THE PROSECUTION TO ENGAGE IN HEARSAY AND BRUTON VIOLATIONS?
- IX. WHETHER IT WAS PREJUDICIAL AND IMPROPER FOR THE ACCUSED TO BE JOINED WITH THE BOSSES, WHOM THE ACCUSED HAD REPORTED TO LAW ENFORCEMENT FOR EMBEZZLEMENT ON 8/2/01, THEREBY INITIATING A FEDERAL INVESTIGATION STARTED BY THE IRS?
- X. WHETHER A RUSH TO JUDGMENT WAS MADE ABUSING NOTICE, LAWFUL CONDUCT, EX POST FACTO PROTECTIONS, ARBITRATION, AND THE RIGHT TO CONTRACT. THE PROSECUTION TEAM ENGAGED IN VINDICTIVE ABUSES OF CHARGING AUTHORITY, SELECTIVENESS, AND PREVENTED THE DEFENSES OF GOOD FAITH RELIANCE AND ENTRAPMENT BY ESTOPPEL?
- XI. WHETHER THE JURY INSTRUCTIONS AND THE JUDGE'S SPECIAL VERDICT FORM IMPROPERLY REMOVED THE BURDEN OF PROOF FROM THE PROSECUTION. THE PRO SE ACCUSED WERE UNFAIRLY DENIED ATTENDANCE AT THE JURY INSTRUCTION CONFERENCE?
- XII. WHETHER JUDICIAL BIAS FAVORING THE PROSECUTION PREVENTED A FAIR TRIAL AND CAUSED BOTH AN UNREASONABLE AND ILLEGAL SENTENCE?

purchase agreement for 420 acres of land in Branson for the MLC project.

(Plaster, TT12 at 2241-46, 2279; Flink, TT17 at 3373-75; Ex. 160.)

The venture never materialized. The venture came after the Access Program and was not part of any of the scheme charged in the Indictment, and was not part of any of the charged false representations of profits and safety of principal the defendants had made to the Access investors. The court was correct in ruling the proposed testimony of these three witnesses would be confusing and irrelevant.

To reinforce the court's point, the Government notes that Marcusse did call witness Williams (even though not subpoenaed at Government expense).

Williams testimony was irrelevant to the Access venture. Williams, did not even know who Marcusse was, nor did he know anything about the Access Financial Program. He testified he was a Tribal Chairman of small band in Northern Michigan who was interested in the MLC project in Branson. He dealt with a man named Michael L. Carney (MLC), not Marcusse. (Williams, TT14 at 2772-77, 2791-97.)

It is clear from the witnesses Plaster, Williams and Agent Flink that the MLC venture had nothing to do with the false representations charged in the Indictment and made to Access investors about huge profits in international markets and safety of principal. The MLC venture was simply the transaction

Melvin Houston, Attorney at Law
15346 Asbury Park
Detroit, Michigan 48227-1545
(313) 835-6479
Fax (313) 835-7909
E-mail: melvin.houston@wayne.edu

~ November 29, 2007

Ms. Janet M. Marcusse
U.S.M. No.: 17128-045
Federal Correctional Institute -
Tallahassee
501 Capital Circle, N.E.
Tallahassee, Florida 32301

Re: U.S.A. vs. Marcusse, et al.

Dear Ms. Marcusse:

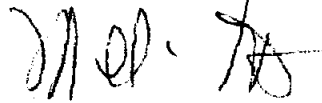
As you know, oral argument was held in the subject case before a three-judge panel of the Court of Appeals on Thursday, November 29, 2007. While the Court generally speaks through its written orders and opinions, it is my belief the eventual decision issued will uphold all of the convictions returned and sentences ordered served in this case.

One of the benefits of oral argument is it provides an opportunity to gauge the judge's reaction to the various issues raised. At times, trying to predict what the Court will do following these sessions can be difficult either because the judges ask no questions, or the questions asked are such that you can't tell what they are thinking. Neither of these problems was present during the hearing in this case. In a separate but related matter, given the evidence was so overwhelming in your case I can't understand why you didn't negotiate some sort of plea arrangement with the prosecution; I am fairly certain you would have been sentenced to serve a term far less than the 25-year term you received following the trial.

In any event, I anticipate receiving a copy of the Court's decision within the next 45 days and will discuss the options available to you when I send you a copy. In the meantime, if you have any questions regarding the hearing earlier today please let me know.

Ms. Janet M. Marcusse
Page 2
November 29, 2007

Very truly yours,

A handwritten signature in black ink, appearing to read "Melvin Houston", with a stylized flourish at the end.

Melvin Houston
Attorney at Law

MH:baw

IN RE APPEAL OF USA v. MARCUSSE
PETITION FOR WRIT OF MANDAMUS

NOW COMES APPELLANT, Janet Marcusse, to petition this Honorable Court for a Writ of Mandamus to remove Melvin Houston (P-36280) as defense counsel for unethical behavior. Mr. Houston has engaged in professional misconduct, choosing to omit essential issues as well as to deliberately misrepresent the facts to the Sixth Circuit in his Briefs and again at oral arguments, in spite of my repeated written admonishments to stop engaging in this behavior. Such behavior acts to bolster the prosecution's meritless case and denies me my Sixth Amendment right to assistance of counsel, causing me to be denied a fair appeal.

I have previously brought my dissatisfaction with Houston's representation to the attention of this Court. On 7/24/06, over a year ago, I filed a motion to remove Houston as counsel for cause after he misrepresented material facts in his Proof Brief as filed on 6/22/06. This motion was never addressed by the Court, and this has now served to prejudice me through Houston's Final Brief in which the same misrepresentations persist, along with his deliberate incompetence at oral arguments.

Specifically, beginning with his Proof Brief, Houston has persisted in misrepresenting the number of witnesses denied to me at trial as only 3 individuals, including that of a Richard Williams who did appear and testify, rather than the true number of 20 prevented witnesses between Judge Bell, the prosecution, and defense counsel (See Exh. A). Houston's conduct has resulted in the substantial under representation of the damage made to my defense. Such conduct serves only to aid the prosecution by

reducing a worthy issue to one that can be dismissed as harmless error.

All direct witnesses to investments were denied by Judge Bell (R. 401), or prevented by defense counsel (Kaczor at TR 2221, 2231); after Judge Bell refused to permit me to proceed pro se at trial after I objected to being denied the use of bank records as evidence at trial (TR 18). An additional 5 direct witnesses to investments passed away prior to the trial. Had my right to a speedy trial been upheld, I would not have permanently lost all of these witnesses. Houston's misconduct served to disguise the considerable bias of the trial judge when he represented to the Sixth Circuit that the number of witnesses denied by Judge Bell was only 3, rather than the 14 individuals named in his Opinion (R. 401). Houston neglected to indicate that the reason so many witnesses were denied was due to Judge Bell's ruling that "alleged investments" were "irrelevant" to the charges (R. 401). AUSA Schipper had attested to the jury the first morning of trial that these charges consisted of a particular investment fraud he specifically named as a "ponzi scheme", repeating the term over and over again (TR 41, See Exh. B). Such a biased ruling usurped the function of the jury to determine the facts. It also demonstrated the utter lack of merit to the charges when the record indicates such a maneuver was necessary to obtain convictions. Only the most incompetent of defense attorneys or one engaging in collusion with the prosecution could omit this upon appeal.

When the "intent to defraud is not debatable", there is no "controversy" to adjudicate to vest the court with jurisdiction

also indicates that my criminal complaint made to law enforcement on 8/2/01 regarding the Boss embezzlement (R. 309-3, See Exh. C) is the event which triggered the federal investigation against me when Det. Crumb, the assigned investigator, contacted the IRS in response to it (Crumb at TR 1486).

In his Appellee Brief, AUSA Schipper mischaracterizes Judge Bell's denial of defense witnesses by claiming that it was due to my asking for inappropriate witnesses, such as John Ashcroft, Alan Greenspan, Robert Rudin, and William Richardson (p. 82). Instead, a review of the defense witness list submitted on the record (R. 392), from which Judge Bell denied the 14 witnesses (R. 401; See also Exh. A), did not include any of these named individuals. Further, Schipper fails to inform the Sixth Circuit that it was defense counsel Kaczor submitting the witness lists. If there was any inability to follow proper procedure, such criticism should be properly placed. Houston never brings any of this to the attention of the Sixth Circuit, nor does he ever correct the number of witnesses denied by Judge Bell from 3 to 14.

At oral arguments, Houston further persisted in attesting that I had been denied Richard Williams as a witness when even the government's brief (p. 84) indicated that Williams appeared as a witness. When this was pointed out at oral arguments in front of the judges determining the appeal, Houston's deliberate incompetence over this issue acted to emphasize his lack of confidence in the validity of this vital issue. The prevention of all direct witnesses to investments in a ponzi scheme trial is not harmless, nor are such games played by court-appointed defense counsel to

is biased against us and unlikely to consider recusal as he has already once refused to do so (TR 20). In that event, we are likely forever denied justice, and because his sentences were so "off the charts", several innocent defendants are likely to die in prison from natural causes given our ages and health histories.

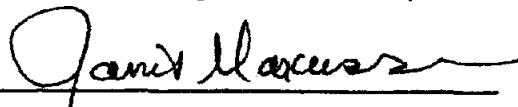
PRAYER FOR RELIEF

1. Remove Melvin Houston as court-appointed counsel for cause.
2. Strike Melvin Houston's Proof Brief, Final Brief, and oral arguments from the record.
3. Remove Melvin Houston's Final Brief from the panel of judges determining the appeal, substituting my Appellant Brief in its place instead of merely as a "Supplemental" Brief.
4. Consider this petition as just cause to initiate proceedings under FRAP 46(b)(3)(A).

Lastly, I request that my status as a pro se be taken into consideration, holding this pleading to the less stringent standards described in Haines v. Kerner, 404 U.S. 519 (1972).

Respectfully submitted,

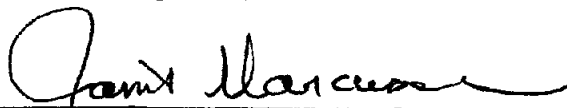
Date: 12/19/07



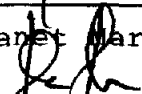
Janet Marcusse, Pro se
All Rights Reserved
501 Capital Circle, NE
Tallahassee, FL 32301

VERIFICATION

I, Janet Marcusse, do hereby declare under penalty of perjury that the facts stated in the foregoing petition are true and correct to the best of my knowledge.



Janet Marcusse


DAVE DURIS, CASE MANAGER,
AUTHORIZED BY THE ACT OF
JULY 7, 1966, AS AMENDED, TO
ADMINISTER OATHS (18 USC 4004)

Melvin Houston, Attorney at Law
15346 Asbury Park
Detroit, Michigan 48227-1545
(313) 835-6479
Fax (313) 835-7909

August 15, 2006

Ms. Janet Marcusse
U.S.M. No.: 17128-045
Federal Correctional Institute - Tallahassee
501 Capital Circle, N.E.
Tallahassee, Florida 32301

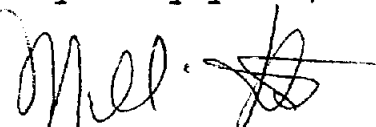
Re: U.S.A. vs. Marcusse

Dear Ms. Marcusse:

This is in response both to your letter to me, dated July 4, 2006, along with the motion you filed asking the Court of Appeals to remove me as your attorney.

Your time would be better spent preparing a pro se brief. As you know, I was appointed by the Court; I was not retained. You, as a result, have no authority to remove me. Unless or until the Court removes me I have no interest or intent of withdrawing. As another alternative, you can always hire your own attorney. Should you do so, have that individual file his appearance and I will gladly withdraw. However, your requests that I voluntarily withdraw will not be honored.

Very truly yours,


Melvin Houston

MH:baw

Case No. 08-1003

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

In re: JANET MARCUSSE,

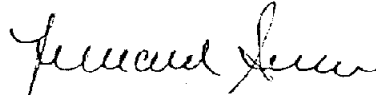
Petitioner

Upon consideration of petitioner's petition for writ of mandamus to remove Melvin Houston as counsel,

It is **ORDERED** that the petition be and it hereby is **DENIED**.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**

Leonard Green, Clerk



Issued: January 17, 2008

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202

UNITED STATES OF AMERICA

v.

JANET MAVIS MARCUSSE

CASE NO. 05-2586 & 05-2668
WESTERN DISTRICT OF MICHIGAN
ROBERT BELL, JUDGE
TRIAL CASE NO. 1:04-cr-165

MOTION FOR RECONSIDERATION
OF PETITION FOR WRIT OF MANDAMUS
CASE NO. 08-1003

FRAP 45(b)

SUBMITTED BY:

Janet Marcusse
501 Capital Circle, NE
Tallahassee, FL 32301

MOTION FOR RECONSIDERATION PURSUANT TO FRAP 45(b)

NOW COMES PETITIONER, Janet Marcusse, to request the reconsideration of her petition for writ of mandamus pursuant to FRAP 45(b). The denial of the writ of mandamus dated January 17, 2008, was delivered to Marcusse on Tuesday, January 22, 2008. According to FRAP 45(b), she has 10 days from such service in which to file a timely motion for reconsideration.

The district court judge who oversaw the proceedings, Judge Bell, was asked by Kathryn Kasner, Case Manager, to respond to Marcusse's petition for writ of mandamus by January 14, 2008. To date, Marcusse has not received an answer. There is no indication that Judge Bell responded, either on the docket of the district court or on the docket of the Sixth Circuit. Nevertheless, Leonard Green, the Clerk of Court, denied the petition on January 17, 2008, without findings of fact or legal reasoning. Such a denial without an answer or findings deprived Marcusse of her constitutional rights and violated procedural safeguards.

According to 52 Am. Jurisprudence 2d, Mandamus, ¶ 424, Waiver, effect of failure to file an answer or return, "A failure to file an answer in a mandamus proceeding admits the truth of the allegations made by the petitioner". ¶ 428, Sufficiency and effect of return, goes on to state, "As in the case when a respondent fails to file any answer or return, all factual allegations properly pleaded in the petition for writ of mandamus that are not denied by the answer or return are deemed admitted."

Judge Bell's lack of a response, therefore, admits the truth of the allegations made by Marcusse, thereby providing the basis

Rehnquist in Evitts, 469 U.S. at 411. Marcusse refuses to be "bound" by Houston's representations either as to his Appellant Brief or as to his oral arguments.

Another vital issue was the fact that the prosecution withdrew the ponzi scheme allegation from jury deliberations (Gezon at TR 3713-14), after legitimate investments were established through the testimony of Robert Plaster. This was done so that they might avoid an acquittal, yet the allegation is resurrected upon appeal as a jury-found fact when this was not true. Having "ponzi law" apply to prevent these unlawfully obtained convictions from being overturned would cause Marcusse to be "damaged or prejudiced in a way not correctable on appeal." See In Re American Medical Systems, 75 F. 3d 1069, 1078 (6th Cir., 1996). None of the defense attorneys on appeal raise this essential issue, choosing their careers and favor with the court over their charges.

Houston even acts to sabotage Marcusse's appeal. He indicates in his Brief, "Agent Flink's testimony was damaging to the defense. He testified the project operated by defendants was, in his opinion, a Ponzi scheme" (p. 11). No mention is made of AUSA Gezon withdrawing the ponzi scheme allegation or of John Ashcroft's friend, Robert Plaster, obtaining and keeping investor funds through a legitimate investment (Plaster at TR 2256). Nor is any mention made of Marcusse not being permitted to use any bank records as evidence to dispute the claim. Houston materially misrepresents the Bahamas CD Program, claiming Marcusse "expected [it] to return \$25 million on a \$350,000 investment" (p. 13). This was not true as Marcusse had testified that over \$4 million had been invested

in it (TR 3057). Houston further omits the material facts that this program was a stock investment (GX-33, p. 2; Marcusse at TR 3040, 3043-44; investor John Beemer at TR 349), and that it was held at Suisse Security Bank & Trust (GX-31), a bank whose license was revoked on 4/2/01 and from which no depositor has received any refunds to date (Def. Exh. M-Q; R. 392-2, p. 26). Instead, Houston misrepresents the program as being two separate programs (p. 13), thus acting to bolster the prosecution's bogus prime bank investment allegations. Houston indicates that, "In any event, Agent Flink made it clear during his testimony he found no evidence that any of the money received from the investors by Access Financial earned any interest from any source" (p. 12), again bolstering the prosecution's bogus ponzi scheme and prime bank allegations by calling the distributions from stock returns "interest". This also aided the IRS's misapplication of tax law. Houston even underlines part of the sentence to emphasize it. He neglects to mention that Flink admitted he made no investigation of any related investment accounts and included none of these investment accounts in the summary exhibits he used as his sole evidence of a ponzi scheme (Flink at TR 2052). Houston also neglects to mention that Flink claimed he couldn't investigate the investment accounts because they were located offshore, such as in the Bahamas, and unless the case were drug related, Flink couldn't get such information (Flink at TR 1982-83). Flink's claim was not true and used to suppress exculpatory evidence.

The only mention of Judge Bell's bias against Marcusse was included in Issue IV in which Houston indicates that "the

Defendant frustrated the district court judge" (p. 24). Houston then misrepresents the record by claiming Marcusse "was representing herself", something she was not permitted to do by Judge Bell, and that she "was just as frustrated with the judicial process" (p. 25), without any explanation of as to why this was so in his Brief. Marcusse had gone to law enforcement on 8/2/01 to report a fraud against her and her investors (R. 309-3; TR 3089-91, 3110). This was skewed in order to turn it back around at her through bogus ponzi scheme allegations in a trial in which she was not permitted to use her own bank records as a defense and repeatedly called a "liar" by the prosecutor, so that a rich friend of the U.S. Attorney General could keep investor funds without concern. As a first-time "offender", the district court's probation office recommended a 14,590 month prison sentence for this "crime". Anyone would be "frustrated" by such a "judicial process".

According to the Supreme Court, "[t]he writ can be issued where there is usurpation of judicial power or a clear abuse of discretion." See Schlagenhauf v. Holder, 379 U.S. 104, 110 (1964); E.E.O.C. v. K-Mart, 694 F. 2d 1055, 1061 (6th Cir., 1982).

To force corrupt defense counsel on someone facing this kind of time for something they did not do so that the status quo might be protected is a clear abuse of discretion.

For the petition for writ of mandamus to be denied when established procedure indicates that the failure to file an answer admits the truth of the allegations made is further troubling in consideration of the severity of the allegations. The failure to file an answer by Judge Bell should have entitled

Marcusse to have her petition granted. After all, she is only asking that Houston's brief be removed from consideration on her behalf.

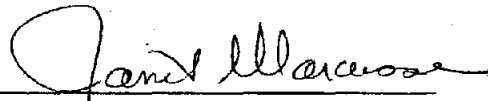
Marcusse has "the burden of showing that [her] right to issuance of the writ is 'clear and undisputable.'" See Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 384 (1953); State Board of Education v. Fox, 620 F. 2d 578, 580 (6th Cir., 1980).

Judge Bell had his opportunity to respond, but chose not to do so, therefore, Marcusse's right to the writ is unchallenged and undisputed. In any event, her Sixth Amendment right to effective assistance of counsel is violated by being forced to be "bound" by the misrepresentations of Houston in this appeal. As the result, Marcusse requests the reconsideration of her petition for writ of mandamus.

Respectfully submitted,

Date: _____

1/24/08



Janet Marcusse, pro se
#17128-045
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FCI Tallahassee
501 Capital Circle, NE
Tallahassee, FL 32301

VERIFICATION

I, Janet Marcusse, do hereby declare under penalty of perjury that the facts contained in the foregoing motion are true and correct to the best of my knowledge.



Janet Marcusse

EXHIBIT U-11

CERTIFICATE OF SERVICE

This is to certify that I have caused the service of a true and correct copy of the following:

MOTION FOR RECONSIDERATION OF PETITION FOR WRIT OF MANDAMUS PURSUANT TO FRAP 45(b)

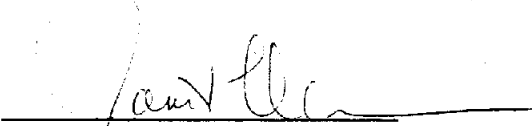
upon the following individuals at the following addresses, by placing same in a sealed envelope, bearing sufficient postage, for the delivery via First Class United States Mail Service to:

Leonard Green, Clerk of Court
Sixth Circuit Court of Appeals
100 East Fifth Street, Room 540
Cincinnati, OH 45202

Kathryn Kasner, Case Manager
Sixth Circuit Court of Appeals
100 East Fifth Street, Room 540
Cincinnati, OH 45202

Michael Schipper
Ass't. U.S. Attorney
330 Ionia Ave., N.W., #501
Grand Rapids, MI 49503

as sent on this 24th day of January, 2008.


Janet Marcusse

Litigation is deemed filed at the time it was delivered to prison authorities. See Houston v. Lack, 101 L. Ed 2d 245 (1988).

Case No. 08-1003

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

In re: JANET MARCUSSE,

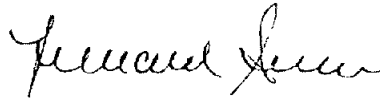
Petitioner

Upon consideration of petitioner's motion for reconsideration of petition for writ of mandamus,

It is **ORDERED** that the motion be and it hereby is **DENIED**.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**

Leonard Green, Clerk



Issued: February 05, 2008

1 think we've got No. 3 for you. Thank you. Exhibit No. 3,
2 which appears to be another Bahamas CD program?

3 A It looks familiar.

4 Q Does that look like literature you prepared and was
5 distributed by the sales staff?

6 A Yes.

7 MR. GEZON: Move to admit Exhibit 3.

8 Can you take a look at Exhibit 4 for me, please?

9 MR. KACZOR: No objection.

10 THE COURT: No objection, it will be received.

11 BY MR. GEZON:

12 Q Here's another one. Can you tell us if this is one of
13 the handouts you worked with and prepared for the sales staff
14 to use?

15 A I have seen this one before.

16 Q Is that one that was passed out at the May seminar
17 actually?

18 A I don't remember what seminar, but I know that it was
19 passed out.

20 MR. GEZON: Move to admit Exhibit 4.

21 THE COURT: Any objection? None being heard, it
22 will be received.

23 BY MR. GEZON:

24 Q Would you take a look at what we put before you marked
25 Exhibit 5, which is entitled "Citizenship the Silver Bullet?"

1 Q 1.2 goes to Branson, Gerry keeps \$125,000, and then the
2 remainder is returned to investors?

3 A There was 125 -- \$120,000 that went to MLC in September
4 of 2001 as well.

5 Q All right. How much was returned to investors and who
6 were the investors that it was returned to?

7 A One of them was a banker friend of a lawyer client over
8 in Green Bay, a Pete Reines, I believe is the last name, and I
9 think that was \$100,000, and that one I was directly involved
10 with. I'm not certain of the exact amounts or who the others
11 may have been, but that one I am because I talked with him
12 myself directly.

13 Q Okay. We've heard about something called the Nevada
14 Project. Is that the Winfield Moon investment opportunity or
15 is that something completely different?

16 A The Nevada Project was referred by Mr. Moon and Mr.
17 Gerry, I believe, and that was a casino funding project for
18 some of the smaller casinos in Las Vegas as far as sometimes
19 they would have short-term cash needs and they would also --
20 and most of that came by way of -- the proper term, I guess,
21 is when somebody comes in and wants a loan or advance to be
22 able to gamble, part of the funds were for that. And then
23 part of it was for whatever, say they needed machines or they
24 needed remodeling or they needed something to do with the
25 casino.

1 Q Okay. So this is a different project than what you've
2 described?

3 A Yes. It was a further diversification.

4 Q All right. And there was some reference in this seminar
5 to something with a 34-year track record. Do you remember
6 that?

7 A Yes.

8 Q What was that referring to?

9 A That was --

10 Q Which project?

11 A That was this program with the casinos.

12 Q Okay. And was money invested in this project?

13 A A very, very tiny amount had been placed into it.

14 Q Okay. How much?

15 A Oh, it was teensy. It was under \$20,000.

16 Q Okay. Let me ask you this. Have we exhausted all the
17 investment opportunities, the diversification? When I say
18 exhausted, I mean have we identified them all? We've
19 identified the Bahamas CD Program, the Branson Project, the
20 Crawford Project. We've identified investments through
21 Winfield Moon, investments through Richard Gerry, and the
22 Nevada Project. Are there any other investment opportunities
23 that you on behalf of Sanctuary was involved in?

24 A There was the failed Valley Boyz project, there was the
25 original investment through Dr. Nichols, and I believe there

1 34-year track record, did you do the math and run it for the
2 full 34 years? Say you put in \$10,000 when you're 20 years
3 old or 25, and by the time you're mid to late 50s, you want
4 your money back.

5 A Yes.

6 Q At the end of 34 years how much money would you have?

7 A Well, it's not a commonly used number, of course. It
8 would come out to approximately \$8 quintillion, which is about
9 the equivalent of 10,000 trillions.

10 Q Okay. I was fairly good at math, but we go millions and
11 then billions?

12 A Yes.

13 Q And then trillions?

14 A Correct.

15 Q And after \$999 trillion, then what's the next number?

16 A Quadrillions, which one quadrillion would be equal to
17 1,000 trillion.

18 Q So we've gone into quadrillion now, but then we go past
19 999 quadrillion to the next, which is what?

20 A Quintillion.

21 Q A quintillion. Did you write that down?

22 A Yeah, I actually printed it out, the figure that it would
23 calculate out to at 34 years.

24 Q Can you show the jury what that number looks like?

25 A It's this figure here.

1 Q Okay. So over eight -- you'd have with that \$10,000
2 investment, if this program was legitimate, was real, you'd
3 have \$8 quintillion?

4 A Correct.

5 Q Once again for the jury, just a perspective, how much
6 money is \$8 quintillion?

7 A I really can't -- it's hard to put it in perspective. I
8 really don't know how much money there is on earth or --

9 Q Likely that's more money than exists on earth?

10 A Quite likely, yes.

11 MR. SCHIPPER: Nothing further, Your Honor.

12 THE COURT: Let's take a break, ladies and
13 gentlemen, and we'll come back and continue this matter.
14 (Proceedings recessed at 10:38 a.m.; reconvened at 10:55 a.m.)

15 MR. GEZON: Your Honor, with your permission we'd
16 ask to interrupt Mr. Corcoran to put in a witness who's flown
17 in, Mr. Plaster. He should be short. I've got the agreement
18 from the attorneys.

19 THE COURT: Okay.

20 (Jury in at 10:57 a.m.)

21 THE COURT: You may be seated.

22 Proceeding with the next witness, please?

23 MR. GEZON: Yes, Your Honor. We'd ask at this time
24 to interrupt Mr. Corcoran and call Mr. Plaster to the stand
25 who's flown in from Missouri.