EXHIBITS

A-12 to Z-12

Honor.

THE COURT: Okay. Please be responsive to the questions.

THE WITNESS: Yes, sir.

BY MR. SCHIPPER:

Q Huge researcher, an obsession of yours, correct?

A Yes.

Q So you hugely researched, you obsessively researched the Nevada Project, correct?

A I did not obsessively research it. It was not on the Internet.

Q But if you're going to invest people's money, this is your baby, if you're going to invest people's money in something, you're going to make sure it's legit, right?

A That's why we had only $20,000 in it, to see for a practice run if it was going to work out well for us.

Q And that's all you'd need because as we saw, $10,000 will get you $8 quintillion. So with $20,000, you'd get $16 quintillion over time, right?

A That would be if it were paying the amount that it currently was paying. Perhaps it was paying one percent a year when it started 34 years ago.

Q That's not what --

A But you didn't bother to investigate that, did you?

THE COURT: Excuse me. Ma'am, you're answering

questions, please.

MR. SCHIPPER: I did. Can we pull up the Nevada Project? What number is that, that document?

BY MR. SCHIPPER:

Q You put this up on the big overhead at the seminar, didn't you?

A Yes.

Q And you sent this out in newsletters to all the investors after the seminar, didn't you?

A Yes.

Q This is 34-year track record, state-backed, correct?

A Does it say it paid 40 percent for four months for 34 years? No, it does not.

Q Well, that has to be the assumption. It doesn't say it didn't.

A It says the current -- well, the current rate of return.

Q No, it doesn't say current. It says rate of return.

A Which would be the current rate of return. That would be like a certificate of deposit at the bank. Everyone knows that it changes rate based on what the current market currently is.

Q No, this says it's got a 34-year track record at 40 percent for four months.

A Well, if you choose to believe something like that.

Q Then what? I'm incompetent like Lieutenant Crumb?

A None of you did an investigation properly on this past Access and Sanctuary, now, did you?

MR. KACZOR: Your Honor, can I just object? Obviously they're just arguing back and forth. Can we have the question, and Mrs. Marcusse, can you answer yes or no to the question, please?

MR. SCHIPPER: Let's go to the Branson Project.

MR. KACZOR: Excuse me. I was addressing the Court.

THE COURT: There's no question before the Court at this point. Please don't argue with the witness.

BY MR. SCHIPPER:

Q Let's go to the Branson Project.

A All right.

Q Now, I've said before that I'm not a math major. I do like numbers. You said your testimony was that the Branson Project had preferred -- now, let's back up. Let me make sure the jury recalls. The Branson Project you talked about at the seminar, but it wasn't something you were investing in at that time at all, right?

A Clients were aware that we were getting into it.

Q But no money had been invested at the time of the seminar?

A Yes, there had.

Q At the seminar you said you weren't investing in it yet?

A It said through Access Financial. Through Sanctuary

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540

CINCINNATI, OHIO 45202

UNITED STATES OF AMERICA

v.

JANET MARCUSSE
WILLIAM FLYNN
GEORGE BESSER
DONALD BUFFIN

CASE NOS.

05-2586/05-2668
05-2556
05-2666
05-2667

WESTERN DISTRICT OF MICHIGAN

PETITION FOR PANEL REHEARING

SUGGESTION FOR REHEARING EN BANC

FRAP 40(a)
FRAP 35(b)

SUBMITTED BY:

Janet Marcusse
FCI Tallahassee
501 Capital Circle, NE
Tallahassee, FL 32301

EXHIBIT B-12

NOW COMES APPELLANT, Janet Marcusse, pro se, to petition this Honorable Court for Panel Rehearing under FRAP 40(a), and suggest Rehearing En Banc per FRAP 35(b), if the panel does not substantially modify its decision once it considers Marcusse's pro se Appellant Brief, which was ignored in the 2/14/08 Non-Published Opinion. The Opinion further conflicts with decisions of the United States Supreme Court and of the Sixth Circuit Court of Appeals, and consideration of the full court may be necessary to secure and maintain uniformity of the Court's decision per FRAP 35(b)(1)(A). Under FRAP 35(b)(1)(B), there is also a question of exceptional importance:

> Whether due process was denied where the Court considered only the brief prepared by incompetent and conflicted appointed counsel, who refused to correct gross errors and omissions, or in the alternative, file an Anders Brief, in the instance where Appellant had been granted permission by the Sixth Circuit to file a pro se brief as a remedy?

Marcusse submits that the fair consideration of her pro se brief would have resulted in several grounds requiring relief due to the structural errors of a biased judge, prosecutorial misconduct, denial of her right to proceed pro se, and Bruton violations over the Bosses (GX-71dd). A direct appeal has always been the best forum in which to seek and obtain such a remedy, but in this case, a direct appeal has been functionally denied to her.

Marcusse was granted permission to file a pro se brief by Case Manager, Bryant Crutcher, on 8/8/06 (Exh. 1), as a remedy to the due process concerns raised in her 7/24/06 motion to remove appointed counsel Melvin Houston for cause. Houston had materially misrepresented the underlying record in his proof brief filed on 6/22/06 and refused to submit vital issues that only an incompetent attorney, or

EXHIBIT B-12

one in collusion with the prosecution, would omit. Houston was provided sufficient notice of these serious errors and omissions, but he persisted in this conduct through his final brief of 6/22/07 and into the 11/29/07 oral arguments, where he sounded drunk on the tape made of it. AUSA Schipper, when asked by the panel, indicated that he had no objections to the other appellants' requests to join Marcusse in her Brief. Her pro se Brief had been accepted and filed on 7/5/07 by the Clerk. Thus, the appellants were led to believe the panel would consider Marcusse's pro se Brief in their Opinion.

To ignore this brief unfairly discriminates against them. The Sixth Circuit has long accepted and considered pro se briefs from represented prisoners. Indeed, one such case was quoted in the 2/14/07 Opinion, United States v. Stull, 743 F. 2d 439, 447 (6th Cir., 1984), where a "pro se" brief was considered. In United States v. Payne, 181 F. 3d 781, 791 (6th Cir., 1989), a pro se supplemental "alternative" brief was heard that was filed "just before oral arguments". In United States v. Modena, 302 F. 3d 626 (6th Cir., 2002), he was both pro se and represented by counsel. While it is true that Marcusse's pro se Brief was oversized, so too was AUSA Schipper's Brief, the only difference being that his was considered by the panel whereas hers was not.

Nor may consideration of the brief be blocked because this is a petition for rehearing. Castille v. Peoples, 489 U.S. 346, 351-352 (1989), held that if an issue is not spotted until after the Opinion is filed, it cannot be first raised upon rehearing. Marcusse's pro se Brief was timely filed prior to the Opinion.

In Martinez v. California, 528 U.S. 152, 163 (2000), the

denial of the appellant's motion to represent himself on appeal was "narrow", applying to those appellate courts that deny such a motion when made. This application may not be made where Marcusse's request to be heard was granted on due process considerations rather than on Faretta. The Martinez Court agreed, holding "any individual right to self-representation on appeal based on autonomy principles must be grounded in the Due Process Clause." Id. at 152. "Appellate courts have maintained the discretion to allow litigants to 'manage their own causes'--and some such litigants have done so effectively." Id. at 158. "We are not aware of any historical consensus establishing a right of self-representation on appeal. We might, nonetheless, paraphrase Faretta and assert: No State or Colony ever forced counsel upon a convicted appellant, and no spokesman ever suggested that such a practice would be tolerable or advisable. 422 U.S., at 382." Id. at 159. "Meanwhile the rules governing appeals...seem to protect the ability of indigent litigants to make pro se filings." See also Anders v. California, 386 U.S. 738 (1967). Id. at 164. "Our system of laws generally presumes that the criminal defendant, after being fully informed, knows his own best interests and does not need them dictated by the State. Any other approach is unworthy of a free people." (Justice Scalia, concurring). Id. at 165.

The manner in which Houston conducted Marcusse's appeal suggests it was done to prevent her from being meaningfully heard. He refused to change any errors or omissions (Exh. 2), persisting in material misrepresentations through oral arguments, only to then attest he had seen no grounds for relief (Exh. 3). If this was true, he should have filed an Anders Brief, which would have caused Marcusse's

pro se Brief to have to be considered. When the conduct of the trial lawyer, David Kaczor, the district court judge, and the prosecution team is added to that of Houston's conduct on appeal, there is sufficient cause to submit that substantial grounds exist in the record to establish this appeal has been unfairly prejudiced by unethical conduct and conflicts of interest, entitling the appellants to a rehearing and/or possible rehearing en banc.

At the district court level, Marcusse was also unexpectedly denied the right to proceed pro se or be heard after she had been granted the right over 10 months before (R. 17, R. 18). On 5/16/05, this right was denied the first morning of trial after she disagreed with Judge Bell's refusal to allow her to use bank records as evidence to dispute the government's allegations of a ponzi investment scheme and she questioned the constitutionality of such a denial (TR 8-9, 13-14, 18, Exh. 4). The court would not permit her intended defense, "bank records show the money was invested with other individuals":

> "The allegation is that you and others--listen carefully to me. The allegation is that you and others fraudulently and deceitfully deceived other people, not that other people deceived you, which may be the case. I imagine the government might concede that if you ask them."

(TR 8, Exh. 4). The court further refused to permit Marcusse to cross examine witnesses or object in front of the jury (TR 18, 31, Exh. 4), under the threat of removal from the trial (TR 26-27, Exh. 4). Marcusse asked the judge to recuse himself for bias but he refused (TR 20, Exh. 4).

"[T]he Constitution guarantees criminal defendants a 'meaningful opportunity to present a complete defense.'" Crane v. Kentucky,

476 U.S. 683, 690 (1986). The exclusion of "competent, reliable evidence" when it "is central to the defendant's claim of innocence" deprives him of the basic right to have the prosecutor's case "survive the crucible of meaningful adversarial testing." Id. The "pro se defendant is entitled to preserve actual control over the case he chooses to present to the jury. This is the core of the Faretta right. McKaskle v. Wiggins, 465 U.S. 168, 178 (1984).

The bank records had been in the government's possession, not Marcusse's, because the Bosses had stolen the records in 2001 to cover up their embezzlement of $1.5 million Marcusse reported to law enforcement on 8/2/01 (R. 309-3; TR 3089-3091, 3110). Det. Crumb contacted the IRS in response (Crumb at TR 1486), causing the investigation against Marcusse. The Bosses gave the records to the IRS in 2002 in exchange for a plea agreement (TR 31921; Case No. 1:06-cv-00694, R. 6, p. 13, Boss "proffer" of evidence). Marcusse testified about the embezzlement at a 5/19/02 meeting of the grand jury.

These bank records were the underlying records to the IRS's summary exhibits, submitted under Rule 1006 of the Fed. Rules of Evidence. Marcusse was at odds with the prosecution over $12.1 million, a substantial dispute, testifying that this amount had been "spent" on legitimate investments, whereas IRS witnesses, acting as "investigators", testified that $12.1 million had been "spent" by the defendants "on themselves and others", using one-page summary exhibits to "prove" it (GX-170, GX-172, Exh. 5).

It was acknowledged in the Government's Trial Brief that the requirement for using Rule 1006 summary exhibits was that the underlying evidence "be admissible under some evidentiary theory" (R. 297,

p. 26). The defense was not permitted this by the court, nor was any breakdown provided for the IRS's bald assertions in these summary exhibits. For example, the $7.3 million in alleged "other spending by defendants" is supported solely by "bulk" exhibits. "Bulk" exhibits consisted of banker's boxes containing the bank records, used as stage props at trial (TR 2649, 3498). Comparing the "supporting" exhibit numbers on GX-172 to the listing of exhibits on the transcript shows they were all "bulk" exhibits (TR 3890, GX-172, Exh. 5). In this manner, meaningful impeachment was prevented.

Kaczor refused to object on Marcusse's behalf; instead he provided her with erroneous advice when asked by the court to explain Rule 1006 evidence:

> "I've explained to her that the rules of evidence allow her to review any of the bank records that were used to formulate the summaries, and therefore, she would be able to look at bank records. And I don't know if they're all the bank records that she's interested in, but the bank records that would be relevant in formulating the summary sheet, she would be able to review those."
>
> DEFENDANT MARCUSSE: "I'm sorry, that doesn't answer the question."
>
> THE COURT: "I think it does, I think it does."

(TR 14-15, Exh. 4). Knowing from the Trial Brief that it was required, Marcusse had asked to use the bank records as evidence, not just "review" or "look" at them.

According to United States v. Jamieson, 427 F. 3d 394, 411 (6th Cir., 2005), "We have held that all documents underlying a Rule 1006 summary must be admissible into evidence".

When Marcusse then suggests that the government might be withholding evidence, the court restates its position:

"I talked to you first to tell you at the outset what someone else may have done with the money that you may or may not have given to them is not the issue in this case. It's not the issue."

(TR 15, Exh. 4).

Kaczor admits to having received "reams" of evidence from Marcusse, but due to pressure from the court, agrees to "weed out" all evidence the court does not want admitted (TR 3049, Exh. 4). She is left with just 9 exhibits to support her testimony regarding $12 million in investments made. As the court had admonished the defense attorneys the first morning of trial, "You know exactly what you can do and not do" (TR 77).

Throughout the entire four-week trial, Judge Bell acts to block Marcusse from using any actual bank records to impeach IRS witnesses (TR 3049, 3141-3142), or as defense evidence (TR 8, 13-15, 629-630, 3191, 3348-3349, 3408, 3677-3680, 3682). Marcusse refuses to close the evidence (TR 3348), but the court overrules her to proceed to closing arguments. As the result, Marcusse is never permitted to submit the government's case to "meaningful adversarial testing".

It was the misapplication of "ponzi law" that caused the trial to be fundamentally unjust. The Government's Trial Brief had posited from the non-published case, In re Mark Benskin & Company, 309 F. 3d 170 (6th Cir., 1995), the "intent to defraud can be inferred as a matter of law from the mere fact that a Defendant is running a Ponzi scheme" [emphasis added] (R. 297, p. 47). From this was also derived the court's Opinion in regards to denying 14 defense witnesses, "alleged investments" are "irrelevant" to the charges (R. 401). The morning following this ruling, Judge Bell meets

EXHIBIT B-12

privately with the jury (TR 2035), which is "absolutely forbidden" according to Krause v. Rhodes, 570 F. 2d 563, 567 (6th Cir., 1977); Mattox v. United States, 146 U.S. 140, 150 (1892).

If a trial judge's involvement has resulted in an unwarranted prejudgment of the merits of the case, any resulting judgment in favor of the party so favored is invalid per Anderson v. Sheppard, 856 F. 2d 741 (6th Cir., 1988).

Glover v. United States, 531 U.S. 198 (2001), held that even one day's increase in a term of imprisonment flowing from defense counsel's failing to object to an error of law may constitute substantial prejudice.

Between the court's ruling, Kaczor, and the prosecution, Marcusse was deprived of at least 20 defense witnesses, including all direct witnesses to investments (Exh. 6). Houston misrepresents this vital issue as the denial of only 3 witnesses, including a Richard Williams (Issue III, p. 22), who did appear for the defense (TR 2271-2801). Houston is notified that his issue is substantially incorrect, including in the 7/23/07 Appellee Brief, yet he persists in arguing the issue incorrectly into oral arguments where AUSA Schipper argues Williams did appear and Houston is made to look foolish, along with this issue. Either Houston is incompetent, or this was a scheme concocted to damage the merits of this issue in front of the panel. In either event, Marcusse is entitled to relief as such games should not be rewarded by any appellate-level court.

A criminal defendant has a constitutional right to present his own witnesses to establish a defense. United States v. Foster, 128 F. 3d 949, 953 (6th Cir., 1997); Washington v. Texas, 388 U.S.

14 (1967).

After review of Houston's 11/29/07 letter (Exh. 3), and the oral arguments audio tape, Marcusse files a Petition for Writ of Mandamus to remove him for unethical behavior, opening Case No. 08-1003 on 1/3/08 at the Sixth Circuit. Judge Bell is sent a copy by the Court with instructions to respond by 1/14/08. He does not respond, which according to 52 Am. Jur. 2d, Mandamus, ¶ 424, "A failure to file an answer in a mandamus proceeding admits the truth of the allegations", yet the Clerk denies the petition on 1/17/08. A motion for reconsideration under 6 Cir. R. 45(b) is denied on 2/5/08 again by the Clerk.

The "ponzi law" opinion may also have derived from the prosecution's "prime bank" scheme theory, however, this theory was founded on evidence that was tampered with, as established by a pre-existing case in the district court (Case No. 1:03-cv-000545-RAE, R. 1-1, Item 34; R. 1-2, Exh. A). Both GX-31 and GX-33 (newsletters) were tampered with prior to submission with the "Instructions to Invest" and "Bahamas CD Program" (GX-2/GX-3) removed so that the program at Suisse Security Bank & Trust could be misrepresented as a "prime bank" scheme when instead it was described as a stock investment. Kaczor admits in his closing arguments that attachments to the newsletters were "*missing*" (TR 3598, Exh. 4), yet he would not object when this evidence was entered.

Thus, this charge also rests on a misapplication of law in that no "prime bank" program, a debt instrument, has ever been defined as a stock or equity investment, as admitted by FBI Agent Samuel Moore (TR 1675, Exh. 4). IRS Agent James Flink refuses to directly answer

the question (TR 2052, 2072-2073, Exh. 4). GX-1, the government's chief exhibit, a prime bank booklet, was simply plucked out of an earlier time than the 39 mail fraud counts, which began on 10/21/99, and falsely alleged as the only kind of investment shown to investors. The record establishes that no investor testified they believed GX-1 to be the only investment; out of 577, only 6 could be found that ever saw GX-1 (Exh. 7), and GX-33, a 10/99 newsletter, stated the investment was a stock program and not a bank debenture program. This theory further violated a contract made by the government with George Besser, wherein he had been deemed the "innocent victim" of a "prime bank" scheme (GX-380) and $400,000 in funds seized in 5/99 were later returned (AUSA Reed Pixler, Phoenix, TR 774).

At a 7/28/04 detention hearing, Marcusse had objected to the entry of GX#2 (renamed GX-1 at trial) for its irrelevancy to the 39 counts (TR 19, Exh. 8), but she was allowed no evidence or witnesses. At trial, Kaczor argued that she had testified about GX-1, "No, that's not the one that we were using" (TR 3595, Exh. 3). He also recounts the contracts in which all investors agreed to "best efforts", diversification, and assigned discretion over the investment choices to the defendants (TR 3595, Exh. 4; Def. Exh. M-L; GX-63d). IRS Agents Flink (TR 2052, Exh. 4), and Steve Corcoran (TR 2292-2293, Exh. 4), admit they included no non prime bank investments in their summary exhibits, they did not include all related bank accounts, and that they made no investigation of any investment accounts. AUSA Gezon persists in representing GX-1 as his "believable evidence" that "many" of the investors were shown it (TR 3714-3715, Exh. 4), in spite of the fact that there was no

evidence to support it. Houston aids the prosecution by misrepresenting Suisse Security Bank and the Bahamas CD Program as two separate programs, and the Bahamas CD Program as "expected to return $25 million on a $350,000 investment" (p. 13).

The summary exhibit Marcusse was reduced to using at trial for the Bahamas CD Program, the stock program custodied at Suisse Security Bank (SSBT), showed wire transfers for it of $4,226,000 (Def. Exh. M-AA, Exh. 9). AUSA Gezon torpedoed her exhibit and credibility by gesturing to the banker's boxes and claiming there was "nothing" in evidence by way of bank statements to support it (TR 3721, Exh. 4), calling her a "liar" at least 12 times. Had Marcusse been permitted the use of bank records as evidence, she could have attached each wire transfer to Def. Exh. M-AA to show the jury the real "liar" was <u>not</u> her. To illustrate, see Exh. 9 for a 7/15/99 wire transfer statement from "bulk" exhibit GX-210 that matches the same entry on Def. Exh. M-AA. Def. Exh. M-Q, a letter fax regarding the revocation of Suisse Security's banking license freezing all funds on 4/2/01 by the Central Bank of the Bahamas was improperly discredited by Gezon's claim it was, "Something she could have gotten off the internet" (TR 3721, Exh. 4).

The court denied summary exhibit Def. Exh. M-Z for $4,186,700 into Crawford Ltd., because the underlying bank records had not been "proffered" (TR 3127), records already in the government's possession. The evidence to support that $2 million was invested in MLC Development, a company in which Robert Plaster had been its Chief Financial Officer (R. 392-2, p. 2, Exh. 10), and who was a good friend of John Ashcroft's, was also blocked. Plaster personally

obtained $1 million of investor funds from MLC (R. 157-2), only to renege on the contract made for $4 million in returns on it. Anthony Valentine, William Flynn's attorney, blocks the contract from being submitted as evidence (TR 2980, Exh. 4). Plaster denies he was a principle in MLC (TR 2248), but admits he kept the money (TR 2256, Exh. 4). The prosecution had tried to keep Plaster out of the trial, but so many investors testified that they became involved due to it, that he was later called (R. 401). A falsified search warrant had been used to raid the home and office of the barrister handling the funds transferred to MLC under bogus "drug trafficking" charges, confiscating records to prevent their use at trial (R. 342; TR 14, Exh. 4; Exh. 11). Thus, while this evidence was blocked, the testimony that Plaster kept the money was damaging enough to the government's case that AUSA Gezon withdraws his ponzi scheme charge from the jury's consideration (TR 3713, Exh. 4), therefore, the jury did not find the defendant's "guilty" of a ponzi scheme.

Def. Exh. M-U was a letter regarding the $1,861,330 that had been invested with Winfield Moon and Richard Gerry. Agent Flink had deceitfully alleged that because Marcusse "owned" Worldwide "E" Capital, LLC, $600,000 in deposits to it were taxable income to her, but he admitted he added this $600,000 after he first testified in front of the grand jury (TR 2098). The underlying bank records from "bulk" exhibit 219 could have proven Moon owned it, but they were not permitted (TR 3141-3142). Neither Moon nor Gerry were permitted by Kaczor to appear as defense witnesses (TR 2220-2223, 2231).

The misapplication of tax law in regards to "pass through"

funds going into investments was used by IRS witnesses to manufacture motive of $4.8 million (GX-170, GX-172, Exh. 5), once they learned the case was going to trial. Over $4 million in unreported "income" allegations were made at trial that had not been made in the indictment (Cnt. 40, Item 3, R. 323). Profit Sharing Plan documents were withheld from evidence in order to misrepresent the handling of qualified funds. Any questions Marcusse asked to clarify the tax issues were blocked by the court (TR 2085-2089), thereby preventing the presentation of a "good faith" Cheek defense. Even the name of the investment organization was misrepresented in order to misconstrue the tax ramifications. None of the 39 mail fraud counts referred to checks from Access (R. 323). AUSA Gezon concedes in the jury instruction hearing the organization may not have been a corporation (TR 3447, Exh. 4). Investment contracts had indicated a "joint venture" wherein distributions up to "adjusted basis" were not taxable under 26 U.S.C. §731. These issues were obscured under labeling the defendants "tax protesters" and "anti-government".

Counsel did object to the gross income jury instruction because it did not state as excluded, "monies received to be transferred at another's direction", addressing the "pass through" funds issue (TR 3457-3459), but the court denied it (TR 3461). For the jury, the mail fraud scheme is made a "failure to file" tax scheme and tied to the money laundering counts (TR 3761-3762, 3772-3776, 3778), which constitutes an abuse of charging authority. After trial, the Boss's unreported income is quietly reduced by $147,377 for "pass through" funds (¶ 147, 171, PSR; R. 501-1, p. 6). The defendants that took the case to appeal were not similarly treated.

A "guidelines" sentence of 13,920 months is calculated in the PSR (Exh. 12), so the court could "downward depart" to "only" 25 years for this Category I "offender", which is over the statutory maximum.

Marcusse supplied Houston with the preceding facts in advance of the filing of his proof brief. In his Statement of Facts, he omits $8 million in investments to which Marcusse testified. In Issue I, he angers the panel by arguing that "defendants used some of the money invested to reward themselves" as being "irrelevant" to the charges (p. 19, 2/14/08 Opinion). This was not derived from Marcusse's pro se brief as intimated, but from Houston's (p. 18). In Issue II, he omits a Bruton violation where a letter is put into evidence (GX-71dd) wherein the Bosses "confess", but blame Marcusse. The Bosses did not testify. In Issue III, Houston misrepresents the deprivation of witnesses as 3 rather than 20. In Issue IV, he argues Marcusse's "demeanor" as his sentencing issue, rather than the absurd 1,160 year calculation and its illegal, unconstitutional, and unreasonable nature.

It cannot be reasonably argued that Houston is merely incompetent. If that were true, he would have been happy to let Marcusse write his brief. Instead, it is clear that he was put into place and stayed there solely to sabotage her appeal so that the case could be bounced back to the control of the district court. Kaczor too appears to have been conflicted. He emerged from Chapter 7 bankruptcy in Case No. 02-04504 on 7/30/04, and immediately following the trial, was appointed to Senior Litigator at the Public Defender's Office (R. 488).

Strickland v. Washington, 466 U.S. 668, 692 (1984), has held

that government interference with counsel's assistance is legally presumed to result in prejudice to the defendant.

Prosecutorial abuses of charging authority and misconduct have infected this case from its inception, further violating the "separation of powers" prohibited by Humphrey's Exr. v. United States, 295 U.S. 602 (1935). Structural errors requiring "automatic reversal" from Chapman v. California, 386 U.S. 18 (1967), include an impartial judge, tainted evidence, and prosecutorial misconduct. Giglio v. United States, 405 U.S. 150 (1972), prohibits the suppression of material or impeachment evidence; United States v. Bagley, 473 U.S. 667 (1985), prohibits the use of false testimony and suppression of exculpatory evidence. United States v. Agurs, 427 U.S. 97 (1976), held the prosecution has the duty to disclose such material. Kyles v. Whitley, 514 U.S. 419 (1995), held a defendant need not demonstrate by a preponderance the suppresed evidence would have resulted in acquittal.

The record is quite clear once the omissions and misrepresentations are exposed. Marcusse has repeatedly objected to the deprivation of her "substantial rights" without being fairly heard, and she has been seriously "prejudiced" by it. These errors affect the "fairness, integrity, or public reputation of judicial proceedings." United States v. Olano, 507 U.S. 725 (1993). The Sixth Circuit promised to consider relief by way of being heard in her pro se brief, but this did not occur. Therefore, Marcusse requests a panel rehearing and suggests a rehearing en banc.

Respectfully submitted,

Date: 2/27/08

Marcusse to look at it and sign it. I did have one in front of me, but I understand. I understand your ruling, and I just wanted the record to reflect that I had prepared one.

THE COURT: Okay. Yes, it can, and if you wish to file the same, you can do that.

MR. KACZOR: Thank you.

THE COURT: Additional objections to the instructions, Mr. DeBoer?

MR. DEBOER: Just one typo, Your Honor.

THE COURT: Yes, please.

MR. DEBOER: Page 16, Paragraph No. 4, the last word on the first line is missing the letter T, I believe.

THE COURT: Yes, yes, good. Thank you, thank you.

From the government?

MR. GEZON: Nothing further, Your Honor. We may show portions of the instructions electronically to the jury as we do closing argument? Is that acceptable to the Court?

THE COURT: Yep, yep. Now, verdict form. Let's start with the government. Any objection?

Let me say this. I've done something I rarely do, and I've only done this because of the nature and the volume of what's been thrown here against the wall for the jurors, and that is after each count I've put an exhibit number.

Now, that may be arguable, but it seems to me that the government carrying its obligation of proving this case

beyond a reasonable doubt has to rise and fall with the particular exhibit that they're hinging their count on. And I'm focusing the jury on the particular exhibit, granted, but their case rises and falls on the jury's determination on that particular exhibit. That's one side of it. The other side of it is the jury is entitled to clarity to know where the government's alleging -- which one of the exhibits the government or which one of a cluster of facts the government's relying on for this particular count. So I've taken a chart of theirs and I've gone through it carefully and I've tried to put that beside the count.

So if you wish to object to it, let me know now. Otherwise I'll presume there's peace with it. Mr. Valentine?

MR. VALENTINE: Your Honor, I'm going to object to it, and that is that I think it has the tendency to elevate what may or may not, but certainly elevate the exhibit mentioned to a premiere status, and by premiere status I mean to a quality of evidence that is greater than any other evidence as relates to that count. And I mean any other evidence, be it testimonial evidence that is from the government's side or frankly, Your Honor, evidence that would tend in coming from either cross-examination or a defense witness himself or a defense witness itself to bump that exhibit now from a lofty perch which it occupies by being mentioned in each count.

MR. VALENTINE: But now is the only time I have to state it, and that is the government indicted this case. They indicted a goodly number of counts against these defendants, and the burden of proof rests with the government to prove these defendants guilty beyond a reasonable doubt. When the verdict form itself like this goes through such detail count by count, what it really does is to fundamentally change the burden of proof because I think what it does is to give to the government an assistance it doesn't deserve.

If the indictment is awfully long and awfully complex, that does bear on the ability of the jury to understand it. And for the government to carry its burden of proof beyond a reasonable doubt and to bear that burden of proof, when a verdict form like this in setting out which check, what the amount of the check was, what the date it was mailed was, starts to spell those things out, I think it -- please don't misinterpret this or be offended by it, Judge -- I think it crosses the line. I think it gives to the government -- it relaxes somewhat the obligation that the government has to prove this case beyond a reasonable doubt.

If it's a complex case, if it's so complex a case that it can't be proven without this sort of assistance this verdict form includes in it, which is only part of the evidence in this case, then maybe the government ought not be indicting these cases with the massive number of counts that

EXHIBIT C-12

it does. And it's on that basis that I object on Mr. Flynn's behalf. Thank you.

THE COURT: What is your constructive suggestion to me?

MR. VALENTINE: To you, Your Honor?

THE COURT: Yes.

MR. VALENTINE: My suggestion would be that you remove from this verdict form the detail, the highlighting detail that it gives to certain checks in certain amounts mailed certain dates and referenced as exhibits, please.

THE COURT: What would happen, Mr. Valentine -- good point. My heart's with you on part of what you're saying.

MR. VALENTINE: All right.

THE COURT: But what would happen if I said Count 1, mail fraud? Whoa, period. And I listed all the defendants. Count 2, mail fraud, period, listed the --

MR. GEZON: Speculating, what might happen is the jury may say, Gosh, we don't think -- we don't understand, maybe we don't follow this closely enough. Maybe the government hasn't convinced us beyond a reasonable doubt. Maybe the effect in the long run would be that the indictments would be simpler indictments. Maybe the government would not expect verdict forms like this that lay out highlighted evidence to the jury. I have to say it. Thank you very much.

THE COURT: Okay. You've expressed yourself well

541 U.S. 433, 437 (2004) (citations omitted). As stated before, the term "Ponzi scheme" is not itself a legally significant term, and is merely used to describe various types of fraud. Movant appears to contend that the use of the term "Ponzi scheme" during the trial combined with its absence in the jury instructions prejudiced her and resulted in defective jury instructions. (1:09-CV-913, Dkt. No. 34, at 67-74, Ex. D). If the term "Ponzi scheme" was in the operative language of the statute which Movant was convicted of, then absence of that language may be an issue. However, that is not the case.

To begin the analysis, the Court must determine whether the jury instructions were ambiguous. Reviewed in its totality, the trial record shows that the jury instruction charges were not ambiguous. (1:04-CR-165, Dkt. Nos. 470-78, 513-22). The necessary elements were clearly delineated in the indictment, trial, and in the statutes. (1:04-CR-165, Dkt. Nos. 108, 470-78, 513-22, 558). Movant has failed to cite any jury instruction or trial transcript that, when reviewed as a whole, appears to be ambiguous. (*See* 1:09-CV-913, Dkt. No. 34, Ex. A-I). The next question is whether the jury instructions properly identified each element the jury must find to convict the Movant. *Middleton*, 541 U.S. at 437. Although parts of the lay definition for the term "Ponzi scheme" and of the operative statutory language which Movant was convicted of were comparable, a "Ponzi scheme" was not an element of any charges brought against Movant. 18 U.S.C. §§ 371, 1341, 1956, 1957. Accordingly, failure to use the term "Ponzi scheme" in the jury instructions did not render the instructions defective.

Movant appears to argue that the periodic use of the term "Ponzi scheme" during trial, its absence from jury instructions, and its use in sentencing proceedings violated the rule of judicial estoppel. (1:09-CV-913, Dkt. No.34, at 75-76). However, Movant misconstrues the legal significance of the term "Ponzi scheme" and the legal principle of judicial estoppel.

The term "Ponzi scheme" is merely a term-of-art used to describe various types of fraud. Under judicial estoppel, the use, or absence of use of the term "Ponzi scheme" is irrelevant; the issue is whether the Government had taken contradictory legal positions during the legal proceedings. Movant has cited nothing on the record or any exhibit indicating that the Government deviated from the legal theory that Movant committed mail fraud or money laundering, or conspiracy to commit mail fraud or money laundering. Accordingly, Movant's argument for judicial estoppel in support of her § 2255 motion is without merit.

Second, Movant asserts that *United States v. Santos*, 553 U.S. 507 (2008), represents grounds for relief from her convictions. The Court reserves ruling on this argument until a response is filed by the Government.

Ground Three

Movant's third ground in support of her § 2255 motion involves six unorganized arguments: (1) the prosecution knowingly presented false testimony, presented false evidence, withheld evidence, and tampered with evidence; (2) defense counsel was ineffective; (3) there was collusion between the Court and Government; (4) witness testimony was incredible; (5) 18 U.S.C. § 3282 statute of limitation bars the superceding

Marcusse. Marcusse's allegations concerning transcript tampering and Bruce Marcusse lying have no support whatsoever. The testimony was accurately recorded, and Marcusse has presented no actual of evidence of any tampering.

M. Ground Nineteen: Argument (1)

Marcusse alleges prosecutorial misconduct occurred during closing arguments which violated her right to Due Process. (Dkt. No. 34, at 218-23.) Marcusse is not entitled to collateral relief on this claim. First, neither Marcusse nor her trial counsel made any objections during the government's closing argument. Therefore, although Marcusse raised this claim in her pro se direct appeal brief, her failure to raise it at trial constitutes procedural default. Moroever, although Marcusse cannot complain that she received ineffective assistance of trial counsel, given her pro se status, Marcusse would not be able to establish that the performance of either trial counsel or appellate counsel was deficient in failing to raise this issue because it is without merit. Additionally, in light of the significant evidence against Marcusse, she could not establish actual prejudice, as necessary to cure the default.

Marcusse argues that the prosecutor "lied" to the jury, citing several statements that she claims are untrue. (Dkt. No. 34, at 219.) But each of the challenged statements was supported by the record. Marcusse states that "[AUSA] Gezon lies, claiming not just 'early', but 'late' investors were given GX-1." (*Id.*) At least two "late" investors testified to having received Government Exhibit 1. (1:04-CR-165, Dkt. Nos. 472, at 412-12; 475, at 1197-98.) Marcusse also states, "Gezon lies, claiming there were no bank statements showing Marcusse

made investments for the Bahamas program." (Dkt. No. 34, at 219.) But Agent Flink testified to that effect (1:04-CR-165, Dkt. Nos. 513, at 2129-30; 520, at 3376-79), and the "summary" exhibit in which Marcusse alleged that she made sizeable investments in the Bahamas was not supported by actual bank statements. Although some money was placed into a "Screw the IRS" account, none of that money was placed into a safe CD-like environment, as promised by Marcusse, and none of it ever made its way back to the investors in the form of returns. (1:04-CR-165, Dkt. No. 513, at 2129-30.)

Marcusse alleges that the prosecutor lied when he said that the $25.5 million check that Marcusse supposedly received in connection with the "Crawford project" was never deposited into the bank, but there is no dispute that the "check" was stamped "uncollectible" by the bank and, thus, the funds were not deposited. (1:04-CR-165, Dkt. No. 519, at 3130-31.) The prosecutor allegedly "lied" when he said that Marcusse gave Robert Plaster a non-refundable $1 million deposit, but that is what Marcusse herself said – that she gave $1 million to Michael Carney, who in turn gave it to Plaster, for that purpose. (1:04-CR-165, Dkt. No. 515, at 2243-45; Dkt. No. 519, at 3207-08.) The prosecutor allegedly "lied" when he said "we'll never know what she did with all that money" but the entire trial demonstrated the truth of that statement. The government looked at between 70 to 80 bank accounts, analyzing all of the checks and deposits, and was able to trace the money as being filtered through 20 primary accounts and then being sent into numerous other bank accounts "in thousands of different directions." (1:04-CR-165, Dkt. No. 520, at 3364.) It was determined,

to the jury the difference between tangible and intangible rights. (1:04-CR-165, Dkt. No. 522, at 3757.) This Court correctly identified "honest services" as a type of intangible right. (*Id.*) However, this Court never instructed the jury that the government's theory of the case against Marcusse was that she engaged in a scheme to defraud anyone of "honest services" or any other intangible right. Indeed, as Marcusse complains in her pleadings, the government presented a theory of guilt and proof at trial that she schemed to deprive victims of their tangible property: their money. (1:04-CR-165, Dkt. No. 521, at 3503, 3511-17.) After all, the government charged mail fraud only under 18 U.S.C. § 1341 without referencing or citing an "honest services" theory under 18 U.S.C. § 1346. Because the jury was not asked by the government to convict Marcusse on an intangible rights or "honest services" theory and this Court did not actually instruct them to review the evidence under such a theory, this Court's explanation could not have rendered her trial fundamentally unfair. *See McGuire*, 502 U.S. at 72.

Marcusse nevertheless notes in passing that an "honest services" fraud case was pending before the Supreme Court at the time she filed her petition for collateral relief last year. Indeed, the Supreme Court held in that case that, in order to avoid unconstitutional vagueness problems, the only "honest services fraud" theories that may be charged under § 1346 are bribery and kickback schemes. *Skilling v. United States*, 130 S. Ct. 2896 (2010). However, the *Skilling* Court was concerned with vague corruption theories charged under § 1346 and specifically distinguished as unproblematic those mail frauds charged only under

was procedurally defaulted. Even if the *Santos* claim was not considered procedurally defaulted, it only entitles Movant to collateral relief on Counts 43-57. However, the Court has discretion to decline to hear a substantive challenge to a conviction when the sentence on the challenged conviction is being served concurrently with an equal or longer sentence on a valid conviction. Because that is the case here, in the absence of procedural default, the Court would exercise its discretion to decline to hear the *Santos* claim. Thus, because Movant has not established that she is entitled to relief, her § 2255 motion will be denied.

Movant has also filed the following motions in this matter: (1) "Motion for Leave to Proceed in Forma Pauperis" (Dkt. No. 7); (2) "Motion for Leave to File Supplement to Ground Seven of the Motion to Vacate Regarding the Pervasive Bias of the Trial Judge" (Dkt. No. 30); (3) "Motion to Disqualify Judge Robert Holmes Bell" (Dkt. No. 32); (4) "Motion for Amended Findings & Objections to Order Denying Motions to File Supplemental Briefs in this § 2255 Proceeding" (Dkt. No. 38); (5) "Motion to Vacate Memorandum Opinions and Orders Dated March 8, 2011, and March 10, 2011, for Fraud and Bias" (Dkt. No. 40); (6) "Motion for Amended or Additional Findings, to Alter or Amend Judgment, and to Vacate the March 30, 2011 Opinion/Order" (Dkt. No. 43); (7) "Motion for Court to Take Judicial Notice of IRS Office of Chief Counsel's Court Documents Requesting Settlement of All Tax Litigation in Petitioner's Favor and Corresponding Judgment so Ordering by U.S. Tax Court; Motion to Expand Record" (Dkt. No. 71); and (8) "Motion for Order to Produce the Docket for Civil Case No. 2002V00301 & for the Office of U.S.

U.S. Department of Justice
Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N.W., Suite 7300, Bicentennial Building
Washington, DC 20530-0001
(202) 252-6020 FAX: 252-6047 (www.usdoj.gov/usao)

Requester: **Janet Marcusse**

Request Number: **10-2226** Date of Receipt: **06-18-10**

Subject: **Suisse Security Bank/MIW** 10 SEP 2010

Dear Requester:

In response to your **administrative appeal** to your Freedom of Information Act and/or Privacy Act request reference above, the paragraph(s) checked below apply:

1. [ ] A search for records located in EOUSA - _____ has revealed no responsive records regarding the above subject.

2. [**X**] A search for records located in the United States Attorney's Office(s) for the **Western District of Michigan** has revealed no responsive records regarding the above subject. Please note that the National City bank records are maintained by the IRS. You may wish to contact that office directly at the following address:

   Internal Revenue Service
   Gary T. Prutsman
   Chief, Disclosure
   Office of Disclosure
   1111 Constitution Avenue, N.W. Room 2012
   Washington, D.C. 20224

3. [ ] After an extensive search, the records which you have requested cannot be located.

This is the final action on this above-numbered request. You may appeal this decision on this request by writing to the **Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001**. Both the letter and envelope should be marked "FOIA Appeal." Your appeal must be received by OIP within 60 days from the date of this letter. If you are dissatisfied with the results of any such administrative appeal, judicial review may thereafter be available in U.S. District Court, 28 C.F.R. §16.9.

Sincerely,

William G. Stewart II
Assistant Director

Form No. 005 - 3/10

EXHIBIT I-12

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JANET MAVIS MARCUSSE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____/

Case No: _____
Crim. No: 1:04-cr-165
Western District of Michigan

MEMORANDUM IN SUPPORT OF MOTION UNDER 28 USC §2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE APPLICATION FOR RELIEF UNDER 28 USC §2255

NOW COMES the Petitioner, Janet Mavis Marcusse ("Marcusse"), as a pro se prisoner, to request a panel of the Sixth Circuit Court of Appeals to certify under 28 USC §2255(h)(1) a second or successive motion, as provided in Section 2244(a), for "newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense". Remand to a different district court judge is also requested.

PROCEDURAL HISTORY

On 10/2/09, an initial Motion to Vacate pursuant to 28 USC §2255 was timely filed (1:09-cv-913, R. 1). On 1/7/10, an Opinion and Order was filed, denying the Motion to Compel Production of Trial Exhibits and Motion to Compel Discovery (Id., R. 9). In support of claims raised the Fed. R. Evid. 1006 summary exhibits were fabricated and false, which had been submitted by the government's chief witness and investigator at trial, CI Div. Special Agent James Flink, purporting to prove a "Ponzi scheme" of no investments made, "other spending" by the defendants of $7.3 million, and $936,626 in unreported income claims against Marcusse, copies of the documents from the bulk bank record exhibits held in the government's custody had been requested to establish violations of **Brady/Giglio/Napue** (Id., R. 5).[1]

1 **Brady v. Maryland**, 373 US 83 (1963); **Giglio v. United States**, 405 US 150 (1972); **Napue v. Illinois**, 360 US 264 (1959).

EXHIBIT J-12

by bank statements in the bulk bank record exhibits, except when Marcusse tries to correct AUSA Schipper's misrepresentation that only a "small portion" of the exhibit came from government sources, Judge Bell interrupts her to deny admission of the exhibit (Id., R. 519, TR 3126)(See Exh. L-1).

Out of $13 million in investments made, Marcusse is permitted just two bank record documents to be entered into evidence to show $660,000 of the $1,861,330 invested with Winfield Moon in Worldwide E Capital. This $660,000 is derived from a Bank of America account, which was labeled bulk exhibit 203. Right after Kaczor agrees to "delete" the bank records from Wells Fargo Bank for Worldwide (Id., R. 519, TR 3163)(See Exh. E-1), he states, "I have two documents that are Mrs. Marcusse's copy of the same documents that are in [bulk exhibit] 203" (Id., R. 519, TR 3164)(See Exh. E-1). AUSA Schipper does not object to the entry of these documents, but conditions that, "I don't think they can come in as part of Bulk Exhibit 203 because they're not part of Bulk Exhibit 203", admitting the documents "are parallel to two of the records within 203" (Id., R. 519, TR 3164-65)(See Exh. E-1). Exhibit I-1 contains a copy of the two page March 31, 2001 statement that was admitted into evidence as Def. Exh. M-BB. In the Bank of America records from Bulk Exhibit 203, there are no receipts or withdrawals that can prove Winfield Moon received the funds into investment, as was available in the Wells Fargo documents.

In support of $13 million in investments made, Marcusse is permitted no defense witness that was a direct witness to investments made where Judge Bell denies 14 of the 29 defense witnesses requested during trial on 5/27/05 (Id., R. 401)(See Exh. M-1). No witness was allowed from SSBT because he held, "the purported external forces which caused the failure of certain Bahamian banks" is "wholly unrelated and irrelevant to this case" (Id., R. 401)(See Exh. M-1, p. 4). During Marcusse's testimony on 6/8/05 regarding the Bahamas program, when Kaczor submits Def. Exh. M-AA, AUSA Gezon admits Kaczor "has been giving us handfuls of purported documents", which claim "to be bank records from the Bahamas", arguing Marcusse should be required to bring "in the bankers to show that these were legitimate records", knowing she had

newsletters that their principal investments were increasing for a total return of 20% per month. *Id.* at 437. By mid-2001, however, Access had spent much of the investors' principal, began to default on profit payments, and became the target of a criminal investigation. *Id.* However, Marcusse and co-defendant Jeffery Visser continued to send out newsletters asking investors to be patient, threatening investors who cooperated with authorities that they could lose their profits and principal, and alleging a government conspiracy to defraud the investors of their money. *Id.* at 437-38.

A grand jury investigation revealed that, "of the approximately $20.7 million in investors' funds taken in by defendants, approximately $8.4 million was used to make monthly 'profit' payments to lull existing investors and attract new ones." *Id.* at 438. "Approximately $4.8 million was diverted by defendants for their personal use, and approximately $7.3 million was dissipated by defendants in other transfers and payments." *Id.* The defendants did not report as income to the Internal Revenue Service any of the investor funds that they received, which they used to pay bills and buy homes, automobiles, airplanes, and real estate. *Id.* Although the defendants deposited investors' funds into numerous bank accounts with church-like names, "Access had no church structure, no building, no services, and no activities of a church or religious nature." *Id.* None of the invested funds, other than the $8.4 million redistributed in "profit" payments, were returned to the investors. *Id.*

In March 2010, Marcusse filed a § 2255 motion challenging her convictions and sentences. The district court determined that Marcusse had raised thirty grounds for relief, many of which contained multiple sub-claims, for a total of over seventy claims. The district court dismissed many of Marcusse's claims sua sponte for lack of merit. After receiving the government's response and Marcusse's reply as to the remaining claims, the court denied those claims and entered a judgment in favor of the government. The district court determined that many of Marcusse's claims were procedurally defaulted and that, even in the absence of procedural default, all of Marcusse's claims, with the exception of her claim regarding *United States v. Santos*, 553 U.S. 507 (2008), lacked merit. Additionally, the court declined to award

relief on Marcusse's *Santos* claim, concluding that the concurrent-sentencing doctrine applied. The court also denied Marcusse a COA. Marcusse filed a timely notice of appeal. (Case No. 12-2677)

Marcusse filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b) and (d). The district court denied the motion, determining that it was merely an attempt to relitigate issues that already had been decided. Marcusse again timely appealed. (Case No. 13-1500)

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the movant must demonstrate that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When the district court denies relief on procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate that reasonable jurists "would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Procedural Bar

Throughout her COA motion, Marcusse challenges the district court's determination that many of her claims are procedurally defaulted due to her failure to raise them at trial or on direct appeal. *See Bousley v. United States*, 523 U.S. 614, 622 (1998). She contends that the claims are not procedurally defaulted because she raised them at trial or in her pro se appellate supplemental brief or because she was prevented from raising them at trial after the court imposed hybrid representation. Because we need not resolve the procedural default issue under the circumstances present in this case, we forgo an analysis of whether these claims are procedurally defaulted and instead consider only the underlying substantive claims. *See Lambrix v. Singletary*, 520 U.S. 518, 525 (1997); *Babick v. Berghuis*, 620 F.3d 571, 576 (6th Cir. 2010).

witness's testimony. 18 U.S.C. § 3500(b). Where evidence consists of voluminous writings, a party may present the evidence in a summary, provided the opposing party is given the opportunity to examine and/or copy the information at a reasonable time and place. *United States v. Modena*, 302 F.3d 626, 633 (6th Cir. 2002); *see* Fed. R. Evid. 1006.

The record supports the district court's determination that Marcusse was given the opportunity to look at the records both before and during trial. Additionally, although Marcusse argues that her rights under *Brady* were violated when the government failed to provide her with bank records concerning the investments that she made with some of the victims' money, such investments not in accordance with the defendants' representations to the victims were collateral to the proceedings. As a result, Marcusse has not demonstrated that the evidence was favorable to her, and thus she has not established a *Brady* violation. *See O'Hara*, 499 F.3d at 502. Accordingly, reasonable jurists would not debate the district court's resolution of this issue.

Sentencing - *Santos*

Marcusse argues that the Supreme Court's decision in *Santos* renders her convictions of money laundering and conspiracy to commit money laundering invalid.

In *Santos*, four justices concluded in a plurality opinion that the term "proceeds," as used in 18 U.S.C. § 1956, the statute under which Marcusse was convicted of money laundering, is to be interpreted as profits and not gross receipts. 553 U.S. at 523. Four other justices concluded that "proceeds" means gross receipts. *Id.* at 531-49. Justice Stevens concurred in the judgment only, finding that, depending on the circumstances, "proceeds" can mean either profits or gross receipts. *Id.* at 524-25. Because Justice Stevens concurred on the narrowest grounds, his concurrence represents the holding of *Santos*. *United States v. Kratt*, 579 F.3d 558, 562 (6th Cir. 2009). Citing Justice Stevens's concurring opinion, this court concluded in *Kratt* that "proceeds" means profits for cases that fall within a certain framework, but continues to mean gross receipts for all other cases. *Id.* This court stated: "'[P]roceeds' . . . means profits only when the § 1956 predicate offense creates a merger problem that leads to a radical increase in the statutory

A representative of the Federal Reserve Bank, an expert in high-yield fraudulent schemes, testified that investment programs, as described in the defendants' sales literature and newsletters, do not exist. (Zawistowski, TT4 at 775-84.) Furthermore, the defendants' investment program had several aspects which were common to similar investment frauds throughout the country.

The expert explained the common indicators of fraud were: 1) use of the term "prime bank" or "top 25 world bank" without giving a specific, actual bank; 2) extremely high rate of return promised; 3) high level of claimed secrecy about a program; 4) claims that well-recognized financial organizations somehow recognize or participate in such programs, like the Federal Reserve, the International Monetary Fund or the International Chamber of Commerce; 5) a claim that the program will benefit mankind in some sort of charitable or humanitarian manner; and 6) a claim that such programs are not widely advertized and not available to the general public. These badges of fraud were present in the defendants' literature.

In this case, not just two or three or even four of these common indicators of fraud were present, but all six common indicators of fraud existed. (Zawistowski, TT4 at 785-94.) In both the Access literature and in the Defendant's sales pitches all six of these common indicators of fraud were used. The Trading Program (Ex.

1) document provided to investors specifically uses the terms Prime Banks, regulated by the Federal Reserve, International Monetary Fund and World Bank. (Zawistowski, TT4 at 789-90.) The Trading Program furthermore says that this investment program is a "Humanitarian Foundation" (Zawistowski, TT4 at 790), and because this is so highly lucrative the banks generally do not make them known to the public. (Zawistowski, TT4 at 791.)

Likewise, the "Bahamas CD Trading Program" (Ex. 3) that was promoted by the Defendants purports to provide a 25% per month rate of return. (Zawistowski, TT4 at 791.) These and many other trading or investment programs all claim extremely high rates of return, secrecy, and world, international or prime bank backing were marketed to potential investors.

D. The Evidence Relating to the Tax Charges

The defendants claimed that Access was affiliated with a church organization, called Sanctuary Ministries, and thus, its income and profits were tax-free. The defendants deposited the investors' principal into 20 different bank accounts, which one or more defendants controlled. Eleven of those accounts had a church name like, Discovery Church, Sanctuary Ministries, Freedom Church of Revelation and Promised Deliverance. (Ex. 170.) The fake monthly profit checks

B. Trial Evidence Related to the Fraudulent and Misleading Representations of Access Financial

1. Representations of High Profits From Secret Markets

Defendants solicited and sold the investment by word-of-mouth recommendations from existing investors. (R. 476: Jager, TT7 at 1449; R. 471: Beemer, TT2 at 333-34; R. 472: Walcott, TT3 at 375-76; Weaver, TT3 at 411-12; Nowak, TT3 at 539-40.) Prospective investors were required to sign a form called a "Non-Disclosure; Non-Circumvention Agreement" before hearing about the investment. (Weaver, TT3 at 413; R. 688: Exs. 63a, 63b, 66b, 66c.)

Prospective investors were told by defendants that the profits being made by Access were from little known, secret financial programs and were not available to the uninformed public, and the profits would be far in excess of more conventional investments. Some investors received a prospectus type brochure which explained the financial market defendants claimed were the source of their lucrative profits (Ex. 1.) The brochure described the secret world of high-yield investments and stated that the alleged market was recognized and regulated by the United States Government, the Federal Reserve and the International Chamber of Commerce ("ICC") (Ex. 1.) Other investors received an "overview" of a "trading program" that promised a 3 percent per month yield, to be compounded daily, indicating "historical effective rates" of 17 percent or over 25 percent per month net to the investor. (Exs. 2, 3.) Consistent with these brochures, investors were told they would be investing in a secret, exclusive program, that their principal was "guaranteed" to be safe, and

Branson project, or the Bahamas CD) failed—it is manifest that no constitutional error occurred. Robert Plaster, in fact, testified. (TT12 at 2241-81.) Gerard Forrester supposedly was a senior supervisory agent for the FBI who purportedly authored letters "endorsing" the Bahamian bank Marcusse maintains she invested money in R.392: Marcusse Resp. at 8; R.401: Order at 3); Christopher Lunn and Raymond Winder also were to testify about matters relating to the Bahamian bank (Suisse Security Bank & Trust); David Pointer, Darwin Kal, Randy Scott, and Christi Heuck, were all to testify about the collateral Branson project. (R.392: Marcusse Resp. at 6, 9, 12, 15.) Matt Rydberg was alleged to be the son of someone who allegedly had entered into a contract to receive Access funds overseas. (*Id.* at 11-12.) This had to do with the alleged Nigerian "investments" that were made (the "Crawford project") and the Court appropriately ruled that the testimony was unnecessarily cumulative (R.401: Order at 4), given that other witnesses testified about that matter and that the whole subject had marginal or no relevance, given that what was at issue were the representations Marcusse made to the investor-victims about their money being placed in "safe" investment vehicles with a guaranteed (high) rate of return. The irrelevance of the remaining two witnesses, Cheryl Gardner, who was to testify about the Court's "First Amendment" violations and "abuses and violations of law by jail staff," and Scott Addison, an "expert on First Amendment issues," who was to testify about "constitutional issues" (R.392: Marcusse Resp. at 15), is obvious.

COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp & CAIS No. 32 of 2009

Michel Harajchi

First Appellant

and

Sonia Harajchi

Second Appellant

And

Suisse Security Bank & Trust, Ltd
(In Liquidation)

Respondent

(Substantive Appeal)

Before: The Hon Mr Justice Blackman, JA
The Hon Mr Justice Newman, JA
The Hon Mr Justice John, JA

Mrs. Jennifer Mangra, with Mr. Jairam Mangra,
Counsel for Appellants
Mr. Anthony McKinney, with Mr. Andrew McKinney,
Counsel for Respondent

31 January 2011

EXHIBIT N-12

The oral judgment of the court was delivered by

Newman, JA:

1. This is an appeal by Michel Harajchi, the second defendant, in proceedings commenced by Suisse Security Trust & Bank Limited, a bank now in liquidation. The other defendants on the Statement of Claim and on the writ were: Mohammed Harajchi (the first appellant and first defendant); this appellant, Michel Harajchi (the second appellant); Sonia Harajchi (the third defendant); Christopher Lunn (the fourth defendant); and Derek Ryan (the fifth defendant).

2. The matter has narrowed down, so far as today's appeal is concerned, to an appeal by Michel Harajchi against the refusal of the Supreme Court judge, Mr. Justice Stephen Isaacs, to strike out the writ and the Statement of Claim. The other matter, which was on the papers before this court, was the appeal of Sonia Harajchi in connection with the costs ordered below. For the moment I intend to concentrate on the appeal of Michel Harajchi.

3. The matter came before the judge, initially, not simply as an application under Order 18, rule 19(1)(a) of the Rules, but also as an application under the inherent jurisdiction of the court. But that is not now the case. The application is confined to the contention that the action ought to be struck out because no reasonable cause of action is disclosed on the pleading.

7. Next, it is material to go to paragraph 3 of the Statement of Claim. There it is alleged these defendants acted together in connection with the affairs of the plaintiff company in the way which is material to the cause of action alleged in the pleading. Paragraph 3, in its material part, states:

> "The Defendants established or caused to be established two (2) International Business Companies ... and used these as vehicles to facilitate and conduct SSBT's banking operations ..."

Then it names two IBCs, but, more particularly, for the purposes of the case today, it names Suisse Security Inc.,(SSI), incorporated on 2nd February, 1998, as one of the companies used as a vehicle to facilitate and conduct SSBT's banking operations. The next material averment to have in mind is that the second defendant was the director and chief operating officer of SSI, its principal shareholder and the sole beneficial owner. Thus the pleading alleges that the second defendant, acting as a manager, conducted the affairs of the plaintiff company or participated in conducting the affairs of the plaintiff company, with the chairman and managing director of the plaintiff company, in a way which enabled him in company with others to use his own company, SSI.

8. One looks at the pleading to see what is alleged they did using SSI. What the pleadings say is that:

> "The Defendants in breach of their fiduciary duties unlawfully directed or caused depositors of SSBT to transfer their funds to ... SSI's bank accounts at Barclays PLC. Between the period [which is stated]

> and February 2001 the Defendants in breach of their fiduciary duties transferred, deposited or caused to "be transferred and deposited various bank deposits of SSBT's customers."

Then, more particularly, one sees the figures in the next paragraph, paragraph 5. SSI is alleged to have received no less than US$2,412,125.95. Further, it is alleged that these balances which were transferred were the plaintiff company's assets held for the benefit of, and utilised in the operations of, SSBT and constituted assets of SSBT. It follows that it is alleged that in causing the funds to be transferred to SSI they were not being used for the purposes for which the plaintiff company held them

9. One has to pause to consider what this action is all about. The plaintiff company, in liquidation, is asserting that about US$250 million was unlawfully, wrongfully transferred to a bank account in the name of SSI, a company wholly controlled by the first appellant. What does that give rise to? It gives rise to a question as to the circumstances in which the plaintiff's money has been received into the account of the first appellant or a company controlled by him. As it happens, the liquidator is doing his best to find out how this money got into SSI's account, but he has not had much success because nobody has responded to his requests for information.

10. Then one can see that in paragraph 10 of the Statement of

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).

Applying this standard—and the court of appeals' ruling that denial of subpoenas for witnesses whose testimony would relate to collateral matters was appropriate—it is manifest that no constitutional error occurred. Robert Plaster, in fact, testified. (1:04-CR-165, Dkt. No. 515, at 2241-81.) Gerard Forrester is allegedly a senior supervisory agent for the FBI who purportedly authored letters "endorsing" the Bahamian bank Marcusse maintains she invested money in. (1:04-CR-165, Dkt. Nos. 392, at 8; 401, at 3.) Christopher Lunn and Raymond Winder also were to testify about matters relating to the Bahamian bank (Suisse Security Bank & Trust). (1:04-CR-165, Dkt. No. 392.) David Pointer, Darwin Kal, Randy Scott, and Christi Heuck, were all to testify about the collateral Branson project. (*Id.*) Matt Rydberg was alleged to be the son of someone who allegedly had entered into a contract to receive Access funds overseas. (*Id.*) His testimony had to do with the alleged Nigerian "investments" that were made (the "Crawford project"). The Court appropriately ruled that all of this proposed testimony was unnecessarily cumulative, given that other witnesses testified about that matter and that the whole subject had marginal or no relevance because the issue was the representations Marcusse made to the investor-victims about their money being placed in "safe" investment vehicles with a guaranteed (high) rate of return. (1:04-CR-165, Dkt. No. 401, at 4.) The Court also appropriately found that the proposed testimony of Cheryl Gardner and Scott Addison regarding this Court's First Amendment violations, was

asserts that the use of the term "Ponzi scheme" prevented the defendants from presenting evidence concerning investments that were made in the Bahamas, he was not prevented from presenting this evidence because of the use of the term, but rather because the defendants did not contend that the money was invested in a guaranteed account in a major world bank, as had been represented to investors, and thus the court deemed the evidence to be irrelevant concerning that issue.

Flynn also argues that the government tampered with exhibits containing the financial prospectuses that were shown to the victims in order to convince them to invest and that it suborned perjury by encouraging witnesses to lie under oath concerning the contents of the prospectuses. He alleges that the investor contract was wrongfully added to a booklet describing "a 10% interest prime bank debenture product," that the investor contract instead belonged to a separate Bahamas stock trading program, and that the government added page numbers to the exhibit. He contends that the contract was added to the exhibit to enlarge the dates during which the conspiracy occurred. Although Flynn asserts that his allegations are supported by evidence in the record, the cited evidence does not establish that the government suborned perjury or tampered with evidence. Furthermore, the record contradicts his assertions. Accordingly, Flynn has not shown that the government engaged in any misconduct involving exhibit or witness tampering.

Additionally, Flynn argues that the government engaged in prosecutorial misconduct by lying throughout closing arguments and challenging his and Marcusse's credibility. The district court properly determined that the purported lies and the challenges to the credibility of Flynn and Marcusse, who had testified at trial, were supported by the trial record. Although the prosecutor did, in one instance, express his personal opinion concerning Marcusse's lack of credibility, the misconduct did not rise to the level of flagrant error because it was not so pronounced as to permeate the entire atmosphere of the trial or to prejudice Flynn. *See Gillard v. Mitchell*, 445 F.3d 883, 897 (6th Cir. 2006); *Pritchett v. Pitcher*, 117 F.3d 959, 964 (6th Cir.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

May 27, 2015

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

RE: Marcuse v. United States

Dear Ms. Marcusse:

The above-entitled petition for writ of certiorari was postmarked May 2, 2015 and received May 27, 2015. The papers are returned for the following reason(s):

Pursuant to this Court's order dated February 23, 2015, this Office is directed to not accept any further petitions in noncriminal matters from you unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1.

Sincerely,
Scott S. Harris, Clerk
By: 
Redmond K. Barnes
(202) 479-3022

Enclosures

EXHIBIT Q-12

501 Capital Circle, NE
Tallahassee, FL 32301

June 9, 2015

Scott S. Harris, Clerk
Office of the Clerk
Supreme Court
1 First Street, NE
Washington, D.C. 20543

Re: Your letter of May 27, 2015

Dear Mr. Harris:

My petition for writ of certiorari was denied access to your Court because it purportedly is in regards to "non-criminal matters", according to the above-referenced letter, a copy of which is attached. Your position is in error, therefore, I have resubmitted the petition, which is also enclosed.

My petition for writ of certiorari appeals the denial of a certificate of appealability from the denial of my §2255 motion to vacate illegal criminal convictions and an illegal sentence of imprisonment. As the result, I direct your attention to Title 28 of the United States Code, as set forth by Congress, where the Rules of Section 2255 motions are set forth, a copy of which is enclosed for your eludication. Reference is made to an April 26, 1976 Order of your employer, the Supreme Court of the United States, which commands in Paragraph 2, "That the *aforementioned rules and forms shall take effect* August 1, 1976, and shall be applicable to all proceedings except to the extent that in the opinion of the court their application in a particular proceeding would not be feasible or would work injustice." As published in Rule 1, Scope, under History; Ancillary Laws and Directives, it is further stated, "section §2255 provides that, if the judge finds the movant's assertions to be meritorious, he 'shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.' This is possible because a motion under §2255 is a further step in the movant's criminal case and not a separate civil action, as appears from the legislative hisoty of section 2 of S 20, 80th Congress, the provisions of which were incorporated by the same Congress in title 28 USC as §2255" [emphasis added].

My petition for writ of certiorari was brought under 28 USC §2255, therefore, it is a further step in the criminal case--a criminal case that was an utter miscarriage of justice by any reasonable and competent standard. In this instance, denying me, a federal prisoner, the same protections under the law as other federal prisoners in their criminal cases, lends the appearance that I am being singled out and discriminated against due to the nature of the claims I am raising. Issue IX raises the injustice exposed over the false denials of the existence of a corrupt FBI agent who assisted in a private enterprise obtaining and stealing millions and millions of dollars of my investor funds--the same funds with which I was criminal charged to protect these individuals to the current day, insuring both I and my investors, who were claimed by the Office of U.S. Attorney to be victims, will never receive justice. To deny me access to the Court in such an

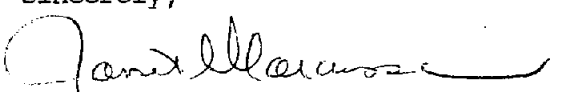
EXHIBIT R-12

instance is to hold federal government employees are above the law, which is activity that will be reported to my investor base if it persists, who have already just been informed of the protection afforded Senior Supervisory Special Agent Gerard Forrester's apparent criminal activity and concealment of this activity by the Western District of Michigan. AUSA's Donald Davis, Thomas Gezon, and Michael Schipper concealed Jerry Forrester's criminal activity, both before and after his retirement from the FBI "in good standing", by representing his "existence" was of "doubtful validity", going so far as to attribute Forrester's written endorsements of a crooked banker and the bank he was operating to me as part of my so-called fraudulent scheme to cause guilty verdicts at trial when these men had cause to know Forrester had been an FBI employee at the time and under the law, I had every right to rely on his written representations.

Issue X raises the injustice exposed by U.S. District Judge Robert Bell in acting outside of his lawful jurisdiction in denying the mandatory requirements set forth in 18 USC §3013 as to ordering special assessments on each count, which are to remain for at least 5 years, by removing them while the direct appeal was pending in the Sixth Circuit Court of Appeals, as soon as the Solicitor General requested certiorari in the **Santos** case arising from the Seventh Circuit, so Judge Bell could insure against having to vacate the 20-year money laundering convictions in the event the Supreme Court agreed with the Seventh Circuit, as later occurred in 2008 in **United States v. Santos**, 553 US 507 (2008). In addition to refusing to vacate 15 criminal convictions Judge Bell knows and admits are invalid under the law, his activity in acting outside his jurisdiction demonstrates the intent of this judge to defy the mandates of the Supreme Court by whatever unlawful means are available. It is no wonder the lower courts feel no compulsion to respect the Opinions of the Supreme Court in federal criminal cases and collateral proceedings where such activity is condoned by obstructing a petition such as mine objecting to it.

In light of these circumstances, my petition for a writ of certiorari, therefore, is being resubmitted, having removed the reference to Rule 60(b) behind the §2255 motion in the forward to the "Questions Presented" on page -i- and replacing it with "a further step in petitioner's criminal case", as none of the 14 issues raised were in regards to the denial of the Rule 60(b) motions for defects in the integrity of the §2255 proceedings.

Sincerely,



Janet Marcusse

Enclosures (3)

EXHIBIT R-12

UNITED STATES TAX COURT

WILLIAM E. FLYNN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 15975-14
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	Filed Electronically
	)	
Respondent.	)	

ANSWER

RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1. Admits.

2. Admits.

3. Admits; alleges that the deficiency in income tax and additions to tax, all of which are in dispute, are as follows:

		Additions to Tax/Penalties I.R.C.§§		
Year	Deficiency	6651(f)	6651(a)(2)	6654
1999	$140,968.00	$102,201.80	$35,242.00	$6,770.28
2000	$59,771.00	$43,333.98	$14,942.75	$3,214.77
2001	$32,918.00	$23,865.55	$8,229.50	$1,315.53

4. Admits.

5. Admits petitioner attached a document to his petition.

6. Admits petitioner attached a document to his petition.

7. Attachment to petition titled "Statement of Issues." First Unnumbered Unlettered Paragraph. Admits petitioner is seeking a redetermination of the Notice of Deficiency.

Second Unnumbered Unlettered Paragraph. Admits petitioner is disputing the adjustments proposed in the Notice of Deficiency. Denies respondent erred as alleged.

I. Denies for lack of sufficient knowledge or information. Alleges the document titled "Tax Chart" shows how the amount of Other Income was determined for the Notice of Deficiency. The document shows in detail the amount and source of the unreported income.

II. Denies for lack of sufficient knowledge or information. Alleges there is no Exhibit GX-1 included with the petition served on respondent. Neither admits nor denies petitioner's statements regarding his characterization of the evidence from his criminal trial. Alleges petitioner did use funds provided to him from investors for personal use.

III. Denies for lack of sufficient knowledge or information.

IV. Denies for lack of sufficient knowledge or information.

V. Admits petitioner has not been charged criminally with failure to file an income tax return for taxable years 1999, 2000, and 2001. Admits petitioner disputes the unreported income adjustment in the notice of deficiency. Denies for lack of sufficient knowledge or information petitioner's statements

and convincing evidence that: (1) the taxpayer's tax liability for each year at issue exceeds the prepayment credits; and (2) the failure to file a return for each such year was due to fraud.

(i) The United States Supreme Court in James v. United States, 366 U.S. 213 (1961), embezzled money constituted gross income in the year in which the funds were misappropriated.

(j) Said issue in the instant case involves the issue of whether petitioner received income in taxable years 1999, 2000, and 2001, which issue was presented and determined adversely to petitioner in the aforesaid criminal case, and said judgment of conviction of petitioner and the addition to tax under I.R.C. § 6651(f) are each dependent upon findings that petitioner for the years at issue did in fact embezzle money when he receive investors' funds and converted those funds to his own personal use.

(k) The prior criminal convictions of petitioner for the taxable years 1999, 2000, and 2001, are conclusive and binding on petitioner, and by reason thereof petitioner is estopped in the present case, under the doctrine of collateral estoppel, from denying herein that he embezzled investor funds and converted investor funds for personal use during 1999, 2000, and 2001.

(4) That, in the alternative to the addition to tax under I.R.C. § 6651(f), the Court determine that there is due a 25-percent addition to tax under the provisions of I.R.C. § 6651(a)(1).

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

Date: SEP 10 2014

By: Laurie B Downs

LAURIE B. DOWNS
General Attorney
(Small business/Self-Employed)
Tax Court Bar No. SL0692
211 W. Wisconsin Avenue
Suite 807, MAIL STOP 2000 MIL
Milwaukee, WI 53203-9921
Telephone: (414) 231-2810

OF COUNSEL:
THOMAS R. THOMAS
Division Counsel
(Small Business/Self-Employed)
JOSEPH T. FERRICK
Area Counsel
(Small Business/Self-Employed:Area 4)
MARK J. MILLER
Associate Area Counsel
Small Business/Self-Employed

IRS Department of the Treasury
Internal Revenue Service
Stop 6250 P-6 (Accounting Dept.)
Kansas City MO 64999

In reply refer to: 0911749660
Dec. 05, 2013 LTR 5016C 0
6 000000 00
00058770
BODC: SB

JANET M MARCUSSE 17128-045
FCI TALLAHASSEE
FEDERAL CORRECTIONAL INSTITUTION
501 CAPITAL CIRCLE NE
TALLAHASSEE FL 32301

049379

Social Security Number:

Dear Taxpayer:

Our records reflect you were ordered by the U.S. District Court to pay restitution as indicated below:

Tax Period	Restitution Amount Ordered	Total Payments Received	Restitution Account Balance
	$ 310,722.00	$.00	$310,722.00

Please review your records and if the total payments received are less than your records, please write to:

Department of Treasury
Internal Revenue Service
Attn: MS 6261 Restitution
333 W. Pershing Rd.
Kansas City, MO 64108

Include copies of documents that show any missing payments.

Please note: Your balances amount(s) reflected above may not include additional penalty and interest that Internal Revenue Service charges.

If you have questions, please call (816) 325-3152 between the hours of 7:00 a.m. and 3:30 p.m. CT.

If you write, please include your telephone number, the hours you can be reached, and a copy of this letter.

Telephone Number ( )_____ Hours_____

EXHIBIT T-12

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA

-v-

JANET MAVIS MARCUSSE,

Defendant.
_____/

Case No. 1:03-mj-666

Grand Rapids, Michigan
July 29, 2004
10:15 a.m.

CONTINUED DETENTION HEARING and PRELIMINARY HEARING
BEFORE THE HONORABLE ELLEN S. CARMODY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: Mr. Thomas J. Gezon
Assistant U.S. Attorney
The Law Building - Fifth Floor
330 Ionia Avenue, NW
Grand Rapids, MI 49503
(616) 456-2404

In Pro Per: Ms. Janet Mavis Marcusse

As Stand-by Counsel: Mr. Raymond S. Kent
Attorney at Law
990 Monroe Ave., NW
Grand Rapids, MI 49503
(616) 458-0550

EXHIBIT U-12

I N D E X

Q All right. On Exhibit 45, yesterday you admitted that some of it went to MLC. Do you have -- can you tell me how much went to MLC?

A The records that I have show approximately $160,000.

Q All right.

THE COURT: Who's that that it went to?

THE WITNESS: MLC --

THE COURT: MLC.

THE WITNESS: -- Developments International --

THE COURT: Okay.

THE WITNESS: -- or Michael Carney.

BY MS. MARCUSSE:

Q And that was a thorough investigation of the 19 banks listed on Number 43?

A Yes.

Q That is just checks?

A Checks and withdrawals and wire transfers and deposits.

Q What did you categorize MLC as, an associate or an investment?

A It would be under "other entities." I'm not sure what it-- it's not listed as a payment to subject.

Q In the government's investigation wasn't it obvious that MLC was an investment?

A No, it wasn't obvious.

Q There was half a day of a seminar devoted to an MLC that

you were not aware of, nobody mentioned?
A What's the question?
Q You were saying you weren't aware of MLC as an investment.
A We were aware of MLC. I'm not sure what it was.
Q We had two clients yesterday mention that. Tim Bannister mentioned that MLC was one of the investments, and he's one of your witnesses.
THE COURT: Ms. Marcusse, let me clarify. This agent doesn't have any witnesses; the government has witnesses.
THE DEFENDANT: Well, the complaint stated that it was a Ponzi and that there were no investments, so I was trying to clarify that because obviously --
THE COURT: You're free to ask him the question. I just wanted you to understand his role here.
THE DEFENDANT: -- obviously the complaint is inaccurate and misleading.
THE COURT: Well, are you asking him if he agrees with that?
BY MS. MARCUSSE:
Q Do you agree with that?
A That it's misleading or what? I'm not sure --
Q Well, acts of omission on purpose to mislead a judge to get an arrest warrant; is that not misleading?
A I'm not sure what your question is.
Q Or is it that you don't like the question?

A No. Are you talking in general or are you talking about this specific?
Q This specific case states that I ran a Ponzi. Thomas Gezon has stated in front of the grand jury that I stole all of the money. Now, in the process of investigating government employees we are finding that there were investments, and to most people's definition that is an act of omission that is designed to be misleading to a judge to get an arrest warrant; is it not?
A I don't think so, no.
Q How can it not be?
THE COURT: Ms. Marcusse, you can't argue with the witness. If you want to ask a different question, if you don't like the witness's answer that you're --
THE DEFENDANT: Okay.
THE COURT: -- one of the tenets of cross-examination is you're stuck with the answer you get.
THE DEFENDANT: All right. Apparently Mr. Flink's never been falsely arrested.
BY MS. MARCUSSE:
Q On the initial deposits you show $20,686,000?
A Yes.
Q Did you have any checks and balances as to money which may be double counted in this figure?
A Explain how it would be double-counted?
Q If it came into one account and then was moved to another,

money went into off shore accounts and other bank accounts and possibly could have had some returns?

THE COURT: The question is is that a normal assumption?

THE DEFENDANT: Right.

THE COURT: Can you answer the question?

THE WITNESS: I would say no.

BY MS. MARCUSSE:

Q Let's see if that's everything I need. Are you aware of who the partners are on MLC?

A No.

Q Did you know Michael Carney, who is now deceased?

A Did I know him?

Q Or did you know of him?

A Yes.

Q Did you speak with him directly?

A Yes.

Q Can you characterize the nature of the conversations?

A I think we were asking him if you invested money with him and he basically said no. He told us that you did not give him any money.

Q Even though you had copies of checks and wire transfers to him?

A What's the question?

Q At that time did you have copies of checks and wire

transfers to MLC?
A We might have had a couple small ones but the largest one we didn't have at that point when we talked to him. That was transferred in later from an account, American Heritage Church.
Q So Michael Carney stated to you that we had no investments with him?
A Yes.
Q Is that recorded somewhere? Is that in writing somewhere?
A I'm not sure. I'm not sure. I think he might have testified to the grand jury.
Q Okay. What would the government characterize it then, as a gift that we were giving money to Michael Carney?
A I'm not sure. I know Mr. Carney said he was making -- he was paying expenses for you while you were living down there.
Q Are you aware of a $1 million dollar check that went to Robert W. Plaster?
A No.
Q Are you aware that Robert W. Plaster was one of the co-founders -- co-partners of MLC?
A No.
Q Are you aware that Robert W. Plaster is one of John Ashcroft's best friends?
A No.
Q Is there anything else that you can tell me about Michael Carney in regards to funds that he may have mentioned to you?

A Not that I can think of. He basically wanted to know if you had given him funds and he denied it at the time we talked to him.
Q All right. So bank records can prove otherwise would be what you would determine -- make your determination on?
A Yes. I said we had $120,000 payment from American Heritage Church, Sanctuary Ministries, in I believe September of '01.
Q Okay.
A But we didn't have that, I don't think, at the time we talked to Mr. Carney.
Q All right. And it's also possible that payments to an MLC or any of the other investments that we had could have been larger because they could have come from offshore accounts that you said you could not track; is that correct?
A That's possible.
Q All right. Now, I believe yesterday you admitted that there was at least 2.7 million that you saw go to the Bahamas out of the accounts?
A No.
Q What did you state?
A I said we tracked that to foreign investments.
THE COURT: How much was that?
THE WITNESS: 2.7 million.
BY MS. MARCUSSE:
Q Again I have to ask, you just used the term yourself, 2.7

A That makes sense.
Q Yes. Did you state that Diane and Wes, the amounts they took was $1.4 million?
A Yes.
Q You mentioned relatives. What relatives did that include?
A Kristin, Joshua. That's pretty much it. Maybe another daughter.
Q All right. What about sister-in-law, brother-in-law, other family members, her brother?
A I'm not -- well, I have some information on her brother. He paid some money and also for some credit cards, I believe.
Q Is that included in that 1.4?
A I believe so.
Q And did Diane and Wes do a plea bargain?
A Did they do one?
Q Yes.
A I don't -- no.
Q No or you don't know?
A What's the definition of "do a plea bargain?"
Q Agree to.
A I'm not sure if I can answer that.
THE COURT: Mr. Gezon?
MR. GEZON: Your Honor, let me state for the record that negotiations with the Bosses and their attorneys occurred. No plea agreement has arisen out of those discussions.

IRS Department of the Treasury
Internal Revenue Service

Stop 6250 P-6 (Accounting Dept.)
Kansas City MO 64999

In reply refer to: 0911749660
Dec. 05, 2013 LTR 5016C 0
6 000000 00
00058770
BODC: SB

JANET M MARCUSSE 17128-045
FCI TALLAHASSEE
FEDERAL CORRECTIONAL INSTITUTION
501 CAPITAL CIRCLE NE
TALLAHASSEE FL 32301

049379

Social Security Number:

Dear Taxpayer:

Our records reflect you were ordered by the U.S. District Court to pay restitution as indicated below:

Tax Period	Restitution Amount Ordered	Total Payments Received	Restitution Account Balance
	$ 310,722.00	$.00	$310,722.00

Please review your records and if the total payments received are less than your records, please write to:

Department of Treasury
Internal Revenue Service
Attn: MS 6261 Restitution
333 W. Pershing Rd.
Kansas City, MO 64108

Include copies of documents that show any missing payments.

Please note: Your balances amount(s) reflected above may not include additional penalty and interest that Internal Revenue Service charges.

If you have questions, please call (816) 325-3152 between the hours of 7:00 a.m. and 3:30 p.m. CT.

If you write, please include your telephone number, the hours you can be reached, and a copy of this letter.

Telephone Number ( )_____ Hours_____

EXHIBIT T-12

FD-302 (Rev. 10-6-95)

141BJJ02.302

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 05/21/2003

[redacted] was interviewed by Special Agent (SA) [redacted] b6 -3,4,5 b7C -3,4,5 [redacted] IRS-Criminal and SA [redacted] FBI regarding Access Financial. After being advised of the identity of the interviewing Agents and the nature of the interview, [redacted] provided the following:

[redacted] states that he invested [redacted] with Access Financial which was from an insurance settlement from a car accident his son had. [redacted] had put [redacted] in [redacted] b6 -1,2,5 b7C -1,2,5 name who she was having an affair with. [redacted] is [redacted] brother. [redacted] brother-in-law invested [redacted] with Access Financial.

[redacted] states that [redacted] helped Access Financial move down to the Branson area of Missouri. [redacted] told [redacted] that $1.2 million of Access Financial funds was wired to MLC Development to purchase the Evergreen property. [redacted] states b6 -1,2,5 b7C -1,2,5 that [redacted] and [redacted] can verify the money was received by MLC by [redacted] at the Union Planter's Bank, Port Royal, Missouri. The [redacted] were employed at MLC Development by Michael Carney. [redacted] states that [redacted], MLC corporate attorney, Scottsdale, Arizona handled MLC after Carney died.

[redacted] states that [redacted] owns D and D Storage, Blue Eye, Missouri, where he believes Access Financial items were stored. According to [redacted], [redacted] is also indicated as the Director of Insurance for MLC. [redacted] is reportedly a b6 -1,2,5 b7C -1,2,5 banker for MLC out of Texas. [redacted] is Director of Engineering, [redacted] is the MLC Director of Security and is a combined Carney and [redacted] connection and [redacted] [redacted] is in charge of Arizona Tribal Affairs.

[redacted] states that Ocean West is the mortgage company b6 -2,5 b7C -2,5 involved with [redacted] house mortgaged for [redacted]

[redacted] provided to SA [redacted] a copy of the February 28, 2003 newsletter provided to [redacted] MLC Employees and Associates, personal data lists, a Fifth Third funds transfer b6 -2,4,5 b7C -2,4,5 request and agreements from His Will Ministries to the First State Bank of Conway and Memphis Union Planters Bank, a letter from Jan

Investigation on 04/29/2003 at Grand Rapids, Michigan

File # 196D-DE-90514 - 292 Date dictated 05/05/2003

by SA [redacted] /bjj (141bjj02.302) b6 -4 b7C -4

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Marcusse - 1134

EXHIBIT V-12

FD-302a (Rev. 10-6-95)

196D-DE-90514

Continuation of FD-302 of [redacted], On 04/29/2003, Page __ b6 -5 b7C -5

Marcusse to Winfield Moon on MLC Developments International, Incorporated letterhead and a memo to [redacted] from Carney regarding MLC's purchase of the Evergreen National Corporation's real estate property which are all enclosed in a 1A envelope. b6 -1 b7C -1

The following names are listed on the MLC Employees & Associates' Data as follows:

Name	Address	Telephone
[redacted]		

b6 -1,2
b7C -1,2

Marcusse-1135

EXHIBIT V-12

FD-302a (Rev. 10-6-95)

196D-DE-90514

Continuation of FD-302 of [redacted], On 04/29/2003, Page [redacted] b6 -5 b7C -5

Name	Address	Telephone

b6 -1
b7C -1

Marcusse-1136

EXHIBIT V-12

FD-302a (Rev. 10-6-95)

196D-DE-90514

Continuation of FD-302 of [redacted], On 04/29/2003, Page [redacted] b6 -5 b7C -5

Name	Address	Telephone

b6 -5
b7C -5

Marcusse-1137

EXHIBIT V-12

10/15/2002

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription _____

at

Source, who is in a position to testify, provided the following information:

On September 16, 2002, Source was interviewed by the interviewing agent. At that time, Source provided a copy of a list of investors for ACCESS GLOBAL LLC [redacted] that Source obtained from [redacted] b7D -1

On October 3, 2002, the interviewing agent sent a copy by fax of the ACCESS GLOBAL list to Special Agent (SA) [redacted] Detroit Division, Grand Rapids Resident Agency. The list corresponds with SA [redacted] wire fraud investigation (196D-DE-90514). b6 -4 b7C -4

10/3/02 Milwaukee, Wisconsin

Investigation on _____ _____

Date dictated

File # 196C-MW-40086 [redacted] 196D-DE-90514 10/15/02 b6 -4 b7C -4

by SA [redacted] /dlh b7D -3

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT W-12

of those would have been signed by Mrs. Boss, Diane Boss.
Q By Diane Boss?
A Yes, sir.
Q Now, you talked about the seminar that you went to. My understanding of the seminar, Mrs. Marcusse announced to everyone during the seminar that she was leaving immediately after the seminar to go to Europe; is that correct?
A Yes, sir.
Q So you're aware that she was going to Europe?
A Yes, sir.
Q And there was also an indication that she was moving to Branson?
A Wasn't an indication that the office was moving to Branson; there was an indication of a Branson Project that we had to sit through the presentation.
Q You ultimately in your investigation went to Branson on two different occasions; is that correct?
A I was there on more than two, but the two that I -- there was two specific times that I went there on my own. I personally went, yes, sir.
Q My understanding is you drive a large coach, you're a --
A A motor coach, yes, sir and we have trips to Branson, so I used some free time down there to actually do some of the work. And then one trip I literally came back, got out of the motor coach after a week down there, got in my car and turned

around and drove back because there was enough information I felt to warrant the trip.

Q Okay. And you were able to -- so you did your investigation, you were in Branson on at least two different occasions?

A Yes, sir.

Q Did an investigation while you were down there. Were you alone?

A Yes, sir.

Q You were able to get some information and obtain some documents?

A Yes, sir.

Q And you provided those documents to the government; is that correct?

A Yes, sir.

Q A large envelope of documents?

A Some files and things, not -- you know, probably a few file folders' worth.

Q You were able to determine that Access Financial had sent $1.2 million to MLC Development for this Branson Project; is that correct?

A According to the documents, yes, sir.

Q Okay. And these are documents that you provided to the government?

A Yes, sir.

Q Okay. You provided to the government a letter from Mrs. Marcusse to Winfield Moon; is that correct?
A Yes, sir.
Q Could you describe for the jury who Winfield Moon is?
A I only knew that he was in Nevada. Basically he was described to me as a high roller. That's all I know. Never met him.
Q You provided a document, a memo to Robert Plaster from Mr. Carney; is that correct?
A Yes, sir.
Q Who is Mr. Plaster?
A Mr. Plaster is a man of great wealth down in Missouri, an older gentleman who's had some success in various enterprises and lives in Lebanon, Missouri, and his name seemed to appear in quite a few places. In fact, Michael Carney was living at one of the Plaster homes that Bob had owned, Bob Plaster had owned, was living there. I was able to determine that. I never met Bob Plaster, though.
Q I'm sorry?
A I never have met Bob Plaster.
Q Okay. My understanding is you attempted to meet Mr. Carney, but he died before you could meet him?
A Yeah, the day that I was going to meet him.
Q Okay. So you were able to determine that he and Mr. Plaster were good friends?

A I was not able to determine a connection between the two, no. I just knew that there was documents moving back and forth, and I did know that Bob Plaster made a trip to Branson, Missouri, to a bank and there was a transaction that took place there, but I couldn't tell you the exact.

Q Well, wasn't he on the board of MLC?

A According to the paperwork, yes, sir.

Q Okay. And he was going to be an investor in this Branson Project as well?

A According to the paperwork, yes, sir.

Q You provided the government with names of individuals who could verify that this money, this $1.2 million, was wired from Access Financial to MLC; is that correct?

A Yes, sir.

Q Do you know whether they ever followed up with that?

A No, sir.

MR. KACZOR: Okay. Thank you.

THE WITNESS: Yes, sir.

THE COURT: Okay. Redirect examination?

MR. SCHIPPER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. SCHIPPER:

Q Good morning, Mr. Bannister.

A Good morning, Mike.

Q I want to address a few of the questions that you were

now on, and --

DEFENDANT MARCUSSE: I will be putting in a motion for bias and prejudice as well.

THE COURT: File as many as you would like. But I'm again telling you that they're not focused, and I'll take them for what they are.

Anything else we need to bring up here? All right. Now, Mr. Besser, you're giving me signals. What's that mean?

DEFENDANT BESSER: Oh, I'm just -- I'm just thinking.

THE COURT: Oh, good.

DEFENDANT BESSER: As a matter of fact, may I address the Court?

THE COURT: You may. You may.

DEFENDANT BESSER: Your Honor, when we were here previously, I believe it was on the 5th, I asked to not have to have anything to do with this attorney that you appointed to me.

THE COURT: Yes.

DEFENDANT BESSER: Well, I have no defense to this charge because I have been in captivity, and so I can't obtain any information which could be used to excuse the charges. I can't try to find an attorney or anything. I was brought here from Mexico as -- well, as I read here, as a drug dealer. I had in excess of five kilograms or more of cocaine. They --

no trial or anything. The FBI got me through Customs agents on January the 11th, and on the same day I was incarcerated in the federal prison. I've seen no judge, no attorney, no nothing, and they took me completely out of the country and put me in the United States, and two other FBI agents met me there.

I guess my first question is, is that legal for the drug charge, and of course it's a different magistrate, it's a case number that's completely different than the one that I'm here answering to. I'm totally confused with that. At one time I guess in this court it was said it was a typographical error. It's pretty hard for me to understand how that could be a typographical error. There was -- permanent detention's been ordered. I'm treated as a dope dealer. I don't even know what the heck it looks like except what I've seen in movies.

THE COURT: Okay. I can't answer those questions. All I can answer is there apparently was an indictment that named you from this court in this particular matter, 1:04-CR-165. You were brought here on this matter.

DEFENDANT BESSER: Oh.

THE COURT: Excuse me, I'm talking.

DEFENDANT BESSER: Excuse me, sir. I apologize.

THE COURT: You were brought here on this matter. You were taken before the magistrate on this matter. You were

detained on this matter. I do not know anything about a matter that may have preceded your arriving here.

Perhaps, Mr. Gezon, I think I've heard this before. Can you clarify something here?

MR. GEZON: Can I, Your Honor? May I have this, Mr. Besser?

DEFENDANT BESSER: Certainly you can.

MR. GEZON: Mr. Besser is showing the Court basically the Rule 5 papers from California. As he states, he was arrested in Mexico on the indictment as you've just described.

DEFENDANT BESSER: No, no, on cocaine charges.

THE COURT: Excuse me. Excuse me. He's talking now.

DEFENDANT BESSER: Excuse me, sir.

MR. GEZON: He was deported by the Mexican authorities actually as a person that's unwanted in that country, being not a citizen of Mexico, being a U.S. citizen. His first location of arrival upon leaving Mexico was the California courts. He was immediately taken before a federal magistrate to be arraigned on the indictment we have here today and told what those charges were, and he was detained.

The paper he has here, Your Honor, is actually the Rule 5 commitment order saying that he's detained and that he was arraigned on the charges. The detention document we have

here is a form, and it actually recites the correct statute, Title 18, 1341, which is mail fraud. But he's quite right, someone on this form also penned in that these charges are conspiracy to distribute five kilograms or more of cocaine. Completely in error, somehow a clerk put that on this form.

This case is not about drugs. He was not arrested on any drug charges, and he continues to refer to that error as some consequence in this matter. I can assure the Court this is not an issue about drugs. This was some clerical error and has nothing to do with this case.

THE COURT: Is it on any other documents?

MR. GEZON: No. Would you like to see this, Your Honor?

THE COURT: Well, that's okay. Does it cite the statutes involved in this case?

MR. GEZON: It does.

THE COURT: Does it cite the docket on this case?

MR. GEZON: It does, and I --

DEFENDANT BESSER: No, no.

MR. GEZON: -- can say I reviewed the proceedings of the Rule 5 before the magistrate and they clearly were arraigning him on the charges in our indictment, not anything to do with drug charges.

THE COURT: Okay. Does that clarify some matters here for you, Mr. Besser?

DEFENDANT BESSER: Not at all, Your Honor.

THE COURT: It does for me.

DEFENDANT BESSER: Well, how was I taken from Mexico in one day? Now, to export a person, they should have some type of export hearing in Mexico, would you think not? Oh, no?

THE COURT: No.

DEFENDANT BESSER: Oh.

THE COURT: Not as long as there's a valid warrant from a United States District Court in the United States. They can come --

DEFENDANT BESSER: This is the warrant that I was extradited on.

THE COURT: I think Mr. Gezon just got through saying that's a copy of a docket sheet on a 105 case. Is that right, Mr. Gezon?

MR. GEZON: Yes, Your Honor. That's the Rule 5 order committing him and returning him to this district.

THE COURT: Right.

DEFENDANT BESSER: Ah-ha, bringing me here, but let's answer to how do we get me out of Mexico with an FBI agent handcuffed in an airplane?

THE COURT: I think I just told you.

DEFENDANT BESSER: Oh, I don't think I recall being there. I didn't see a judge, I didn't see anything. I was

kidnapped. On the record, I was kidnapped from Mexico. I can't understand how our judicial system of this country could do something like that. I'm a damn bit confused, Your Honor, not being in contempt or anything of that nature. If I can prove to you that in Mexico these false drug records were involved, then I guess that would enlighten the Court with some information that might change the decision.

THE COURT: Not as long as there was a valid warrant in this case out for your arrest.

DEFENDANT BESSER: Oh, and they can go down there with a different warrant and say I'm a drug dealer?

THE COURT: No, they didn't say that. Listen carefully.

DEFENDANT BESSER: Oh, yeah, they said that.

THE COURT: Listen carefully to what Mr. Gezon said.

DEFENDANT BESSER: What he said and what happened is two different things, Your Honor.

THE COURT: You're here. There was a warrant out for you. I'm sorry, I can't go back and unwind some clock somewhere that someone else did. All I know is you're here, I have jurisdiction of you, and we're going to have the pleasure of you being with us throughout this next trial, throughout this trial.

DEFENDANT BESSER: Okay. Then we've discussed this attorney on numerous occasions. For the record, Your Honor,

UNITED STATES TAX COURT

JANET MAVIS MARCUSSE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 14234-09
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

OBJECTION TO PETITIONER'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

PURSUANT TO the Court's Order dated August 13, 2010, respondent hereby objects to the granting of petitioner's MOTION TO COMPEL PRODUCTION OF DOCUMENTS.

IN SUPPORT THEREOF, respondent respectfully states:

1. In the Motion to Compel Production of Documents filed on August 9, 2010, petitioner specifically requests the documents from items (1), (1)(a), (2), (4), (5), (6), (6)(a), (7), (8), (9), (11), (12), (13), (14), (18), (20), and (22) of the Request for Production of Documents be produced.

2. With respect to items (1)(a)[1], (4), (6), (7), and (9), respondent has already provided copies of these documents to petitioner. These were provided in respondent's response to petitioner's informal discovery requests dated March 10, 2010.

[1] Petitioner claims, on pages 6-7 of her Motion to Compel, that exhibits GX-219 and GX-219a were incomplete. Respondent has provided petitioner with what he believes is a copy of each of these exhibits as entered into evidence at petitioner's criminal trial.

3. With respect to requests (1), (2), (5), (6)(a), (8), (11), (12), (13), (14), (18), (20) and (22), respondent maintains his objections as enumerated in his response to petitioner's formal request for production of documents, which are:

REQUEST (1). Documents suppressed to show $635,000 was invested in Worldwide "E" Capital, LLC, a company owned by Winfield Moon. At the time of the 5/05 criminal trial, Moon was in his 80's and suffering from cancer. Moon is believed to have passed away in 2006.

RESPONSE (1). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Without waiving the objections, respondent does not believe that he has any documents responsive to this Request.

REQUEST (2). Documents to support Bruce Marcusse's sworn testimony that "every one of them", referring to the $45,000 in checks signed by Diane Boss to him were for the L & J oil partnership loan (Refer to "P" exhibits in Reply, transcript page "TR" 1394), in consideration of the fact that Agent Fink indicates the loan was "27-some thousand", paid "during the divorce", and "I might have seen—he might have shown me

something on the loan documents" ("P" exhibit, TR 2102), but the loan document was never submitted as evidence at trial and his testimony contradicts the divorce pleadings (See Exh. T to Reply). The Bank of Casey was where this loan originated at 101 Alabama, Casey, IL 62420 (See Exh. S to Reply).

RESPONSE (2). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Respondent further objects as this information appears to be obtainable from another source that is more convenient and less burdensome than respondent. Without waiving the objections, respondent does not believe he has any documents responsive to this Request.

REQUEST (5). All wire transfers made by petitioner's attorney, Gurmail Sidhu, which were confiscated and suppressed from the trial (Refer to Exhibit D, Reply), and a copy of the search warrant used to do it. Sidhu's address was 295 Hagley Road, Edgbaston, Birmingham B16 9NB, United Kingdom, telephone 0121-454-6604.

RESPONSE (5). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably

petitioner] from another source that is more convenient and less burdensome than respondent.

REQUEST (8). It was agreed GX-95 shows $31,378 in hotel bills. Please provide particulars on these hotel bills so that petitioner may show funds paid to her were paid for these hotel bills as business expenses credited to the correct taxable year.

RESPONSE (8). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Respondent further objects as this information is obtainable from another source that is more convenient and less burdensome than respondent.

REQUEST (11). In regards to the letters of endorsement for Suisse Security Bank & Trust made by Senior Supervisory Agent Gerard Forrester, which respondent's Answer admits existed (¶ 6(p)), please provide dates of employment for Forrester, including in the Miami office of the FBI, and the nature of his relationship with the management of Suisse Security Bank.

RESPONSE (11). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence.

Respondent further objects as this is an improper request for production of documents as this Request does not in fact request any documents.

REQUEST (12). In regards to the perjury in which respondent's agents James Flink, Stephan Corcoran, and Darline Goeman engaged at petitioner's trial, please provide impeachment information in their personnel files, if any. Please also provide dates of employment, and any awards, promotions, or bonuses earned as the result of petitioner's case.

RESPONSE (12). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Respondent further objects as this is an improper request for production of documents as this Request does not in fact request any documents. Respondent denies petitioner's claim regarding perjury by respondent's agents.

REQUEST (13). Please provide dates of employment for attorney James Kramer-Wilt, Bureau of Public Debt., [sic] Dept. of Treasury, and impeachment information.

RESPONSE (13). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably

calculated to lead to discovery of admissible evidence. Respondent further objects as this is an improper request for production of documents as this Request does not in fact request any documents.

REQUEST (14). Leonard Zawistowski of the Federal Reserve admitted "we collapsed" some Bahamanian banks in 2001, referring to his employer, which was removed from transcript page 806 before publication. 28 USC § 753(b) indicates the original shorthand notes or other original records as taken are to be filed with the clerk, who shall preserve them in the public records of the court for not less than ten years. Petitioner has previously challenged the accuracy of the trial transcripts, including specifically about the Zawistowski admittance (Refer to Exhibit KK in Reply), but three days after this complaint was filed, the criminal court made her a "restricted" filer, denying her access to that court and avoiding a response (R. 601). Therefore, as petitioner is unable to obtain the notes or records, which are supposed to be available to her under 28 USC § 753(b), she request respondent to obtain them in support of her claims of "unclean hands".

RESPONSE (14). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably

calculated to lead to discovery of admissible evidence. Respondent further objects as this information is obtainable from another source that is more convenient and less burdensome than respondent.

REQUEST (18). Please have Wells Fargo Bank confirm whether the attached document from it acknowledging receipt of a $25.5 million check dated November 21, 2000, was a legitimate document. At the criminal trial, AUSA Schipper objected to the check's entry because "Worldwide E Capital never accepted that, did they?", referring to the $25.5 million check (TR 3129, see attached), which was not true if this document is credited as legitimate. In his rebuttal closing arguments, AUSA Gezon continued to insist, "It wasn't deposited" (TR 3720), to support his bogus claims that no investments were made for Crawford, Ltd.

RESPONSE (18). Respondent objects to this Request as vague, ambiguous, overbroad and unduly burdensome. Respondent also objects to this Request as irrelevant and not reasonably calculated to lead to discovery of admissible evidence. Respondent further objects as this information is obtainable from another source that is more convenient and less burdensome than respondent. Respondent objects as this is an improper

6. It should be noted that petitioner was not convicted of a tax crime following her 2005 criminal trial. Petitioner was convicted of 60 counts of mail fraud, conspiracy to commit mail fraud, conspiracy to commit money laundering, money laundering, and conspiracy to defraud the United States. While evidence of income she received from her actions was presented at trial, she was not convicted of a tax crime. Respondent has not plead res judicata or collateral estoppel in this case because petitioner has not been convicted of a tax crime.

7. Petitioner spends a significant portion of her Motion to Compel discussing what she believes the requested evidence proves, most of which contain legal conclusions. Respondent submits that there has yet to be a trial in this case and that therefore, the arguments made by petitioner are not appropriate at this time.

8. Petitioner also argues that respondent cannot rely upon the "res judicata or 'relitigation' argument to try to evade a full redetermination on the merits." (Motion to Compel, page 5). In support of this claim, petitioner asserts that the Tax Court has power to reconsider a decision when a decision was fraudulently obtained, citing, Kenner v. Commissioner, 387 F.2d 689 (7th Cir. 1968), *cert. denied*, 393 U.S. 841 (1986), *reh. Denied*, 393 U.S. 971 (1968), Commissioner v. Sunnen, 333 U.S.

591, 597 (1948), Montana v. United States, 404 U.S. 147 (1979), and Hickman v. Commissioner, 183 F.3d 535 (6th Cir. 1999), all involve the redetermination of Tax Court decisions. Respondent again points out that petitioner has not been convicted of a tax crime and thus respondent is not relying on res judicata. Furthermore, this Court is not a court of criminal jurisdiction and cannot therefore release petitioner from her current incarceration.

WHEREFORE, it is prayed that petitioner's Motion be denied.

WILLIAM J. WILKINS
Chief Counsel
Internal Revenue Service

Date: SEP 03 2010 By: Erin R. Hines

ERIN R. HINES
General Attorney
(Small Business/Self-Employed)
Tax Court Bar No. HE0442
P.O. Box 77085
Washington, DC 20013
Telephone: (202) 874-1893

OF COUNSEL:
THOMAS R. THOMAS
Division Counsel
(Small Business/Self-Employed)
NANCY B. ROMANO
Area Counsel
(Small Business/Self-Employed:Area 2)
NANCY C. CARVER
Associate Area Counsel
(Small Business/Self-Employed)